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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 28 जनवरी, 2014 / 8 माघ, 1935

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, *the* 20th *January*, 2014

No.HHC/Admn.6 (24)74-Part.—The High Court of Himachal Pradesh, in exercise of the powers vested U/S 12(2) of the Code of Criminal Procedure, 1973, has been pleased to appoint Civil Judge (Junior Division)-*cum*-JMIC (I), Dharamshala as Additional Chief Judicial Magistrate for Kangra Division, authorizing him to look after the urgent work pertaining to Civil and Sessions Division, Kangra *w.e.f.* 3-2-2014 to 11-2-2014.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, *the* 16*th January*, 2014

No.HHC/Admn.16 (8)74-III.—Hon'ble the Acting Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Shri Ashwani Kumar **(Enrl. No. 331/HIM/2011)** and Shri Ashwani Kumar **(Enrl. No. 204/HIM/2011)**, Advocates, Hamirpur as Oath Commissioners at Hamirpur, for a period of two years, with immediate effect, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, *the* 15*th January*, 2014

No.HHC/Admn.16 (15)74-Part.—Hon'ble the Acting Chief Justice, has been pleased to cancel the appointment of Ms. Manju Bala, Advocate as Oath Commissioner, Solan, appointed vide Registry Notification No. HHC/Admn. 16(15)74-V-9063-72, dated 22-3-2012, with immediate effect, as recommended by the District and Sessions Judge, Solan.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, *the* 17*th January*, 2014

No.HHC/Admn.16 (7)-Part.—Hon'ble the Acting Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Ms. Shikha Hans, Advocate, Dharamshala, as Oath Commissioner at Dharamshala, for a period of two years with immediate effect for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, *the* 17*th January*, 2014

No.HHC/Admn.16 (7)-Part.—Hon'ble the Acting Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Rajesh Kumar Dhiman, Advocate, Kangra as Oath Commissioner at Kangra with immediate effect for a period of two years, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, *the* 22*nd January*, 2014

No.HHC/Admn.6 (24)74-Part.—The High Court of Himachal Pradesh, in exercise of the powers vested U/S 12(2) of the Code of Criminal Procedure, 1973, has been pleased to appoint Civil Judge (Junior Division)-*cum*-JMIC, Chamba as Additional Chief Judicial Magistrate for Chamba Division, authorizing him to look after the urgent work pertaining to Civil and Sessions Division, Chamba *w.e.f.* 2-2-2014 to 16-2-2014.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, *the* 22nd *January*, 2014

No.HHC/Admn.6 (23)/74-XV.—Hon'ble the Acting Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Civil Judge (Senior Division)-*cum*-ACJM (I), Amb, District Una, H.P. as Drawing and Disbursing Officer in respect of the Courts of Civil Judge (Junior Division)-*cum*-JMIC (II), Amb and Civil Judge (Junior Division)-*cum*-JMIC (III), Amb and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Courts under Major Head "2014-Administration of Justice" with immediate effect till the posting of new Presiding Officer in those Courts.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, *the* 22nd *January*, 2014

No.HHC/Admn.6 (23)/74-XV.—Hon'ble the Acting Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Civil Judge (Junior Division)-*cum*-JMIC, Chamba as Drawing and Disbursing Officer in respect of the Courts of District & Sessions Judge, Chamba; Additional District & Sessions Judge, Chamba;

Civil Judge (Senior Division)-*cum*-CJM, Chamba and Civil Judge (Junior Division)-*cum*-JMIC, Dalhousie and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Courts under Major Head "2014-Administration of Justice" *w.e.f.* 2-2-2014 to 16-2-2014.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001

CORRIGENDUM

Shimla, *the* 24th *January*, 2014

No. HHC/LIB.1(5-D.L.T.)/89.—In continuation of tender notice No. HCC/LIB.1.(5-D.L.T.)/89-588-89, dated 6-1-2014, published on the website of High Court of H.P. and also in two newspapers "The Tribune"dated 09-01-2014 and "Amar Ujala" dated 08-01-2014, Chandigarh Editions, inviting sealed tenders from the reputed publishers and suppliers for the supply of Commentary on Law books/Bare Acts (latest edition) for High Court valuing approximately Rs. 25,63,120/- and for subordinate Courts valuing approximately Rs. 6,70,000/-, the following terms and conditions may please be read in addition to the terms and conditions already published in the aforesaid tender notice:

Additional Terms and Conditions of the Tender

1. Every tender should be accompanied by an earnest money to the extent of 5% of the tender amount in the shape of demand draft or bank guarantee in the name of Registrar General, High Court of H.P., Shimla. The tender(s) received without earnest money shall be liable to be rejected. In case any supplier has already furnished the quotation/tender, then they are also required to pay the earnest money at the rate of 5% of the tender amount so as to reach in the office of Registrar General, High Court of H.P., Shimla on or before 17-2-2014. In case the tenderer, who has already submitted his tender fails to furnish the earnest money to the extent of 5% of the total tender amount by 17-2-2014, then his tender/quotation shall not be taken into consideration and liable to be rejected.

2. The successful tenderer shall have to deposit the performance security to the extent of 5% of the value of the contract within a week after the acceptance of the contract.

3. The earnest money of unsuccessful tenderer shall be returned to them on finalisation of the tender process and the earnest money of successful tenderer as well as the performance security to be deposited by the successful tenderer(s) shall be retained by the Registrar General, High Court of H.P. till the completion of the entire supply of books being the subject matter of the contract.

By order,
Sd/-
Registrar General.

पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग

अधिसूचना

शिमला–2, 21 जनवरी, 2014

संख्याः एसटीई–बी (2)–8 / 2010.––हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग, हिमाचल प्रदेश में **अनुसंधान सहायक, वर्ग–III** (अराजपत्रित) अलिपिक वर्गीय सेवाएं, के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध–'क' के अनुसार भर्ती और प्रोन्नति नियम बनाती है, अर्थातः––

1. **संक्षिप्त नाम और प्रारम्भ.**––(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग, में अनुसंधान सहायक, वर्ग–III (अराजपत्रित), अलिपिक वर्गीय सेवाएं, भर्ती और प्रोन्नति नियम, 2013 है ।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित होने की तारीख से प्रवृत होंगे।

आदेश द्वारा,
हस्ताक्षरित / –
प्रधान सचिव(पर्यावरण, विज्ञान एवं प्रौद्योगिकी)।

उपाबन्ध–''क''

हिमाचल प्रदेश पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग, में अनुसंधान सहायक, वर्ग–III (अराजपत्रित), अलिपिक वर्गीय सेवाएं के पद के लिए भर्ती और प्रोन्नति नियम

1. **पद का नाम.**––अनुसंधान सहायक।

2. **पदों की संख्या.**––2 (दो)।

3. **वर्गीकरण.**––वर्ग–III (अराजपत्रित), अलिपिक वर्गीय सेवाएं।

4. **वेतनमान.**––(*i*) नियमित अभ्यार्थियों के लिए वेतनमान रु0 10300–34800 रुपये जमा 3800 रुपये ग्रेड पे।

(*ii*) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियांः स्तम्भ संख्याः 15–क में दिए गए ब्यौरे के अनुसार 14100 रुपए प्रतिमास।

5. चयन पद अथवा अचयन पद.——लागू नहीं ।

6. सीधी भर्ती के लिए आयु.——18 से 45 वर्ष :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी;

परन्तु यह और कि यदि तदर्थ आधार पर नियुक्त किया गया अभ्यर्थी इस रुप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा;

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जनजातियों तथा अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश के अधीन अनुज्ञेय है;

परन्तु यह और कि पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सेक्टर निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर निगमों/स्वायत्त निकायों में आमेलन से पूर्व, सरकारी कर्मचारी थे, सीधी भर्ती में आयु की सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चात्वर्ती ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/ किए गए हैं और उन पब्लिक सेक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रुप से आमेलित किए गए हैं/किए गए थे :

(1) सीधी भर्ती के लिए आयु सीमा की गणना उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें पद (पदों) को आवेदन आमन्त्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव, हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल की जा सकेगी।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.——**(क)** ***अनिवार्य अर्हता:*** किसी मान्यता प्राप्त विश्वविद्यालय या केन्द्रीय/हिमाचल प्रदेश सरकार द्वारा सभ्यक रूप से मान्यता प्राप्त संस्था से पर्यावरण विज्ञान में स्नातकोतर की उपाधि या पर्यावरण विज्ञान या पर्यावरण इंजीनियरिंग (यान्त्रिकी) में बी0 ई0/बी0 टैक की उपाधि प्राप्त की हो ।

(ख) वांछनीय अर्हता.——हिमाचल प्रदेश की रुढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्नत व्यक्तियों की दशा में लागू होंगी या नहीं.——***आयु:*** लागू नही

शैक्षिक अर्हताएं : लागू नहीं ।

9. परिवीक्षा की अवधि, यदि कोई हो.——दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दे।

10. भर्ती की पद्धतिः भर्ती सीधी होगी या प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता.——शत प्रतिशत सैकण्डमैट आधार पर । ऐसा न होने पर, यथास्थिति, सीधी भर्ती द्वारा नियमित आधार पर या संविदा के आधार भर्ती द्वारा ।

11. प्रोन्नति, सैकण्डमैंट, मान्यता प्राप्त पर्यावरण विज्ञान में स्नातकोतर उपाधि या स्थानान्तरण की दशा में श्रेणियां, जिनमें से प्रोन्नति/सैकण्डमैंट/स्थानान्तरण किया जाएगा.––पर्यावरण विज्ञान या पर्यावरण ईजीनियरिंग में बी0 ई0/बी0 टैक की उपाधि धारण करने के अध्यधीन और हिमाचल प्रदेश सरकार के अन्य विभागों/बोंडों/निगमों/स्वायत्त निकायों में समरूप वेतनमान में कार्यरत इस पद के पदधारि (यों) में से सैकण्डमैंट आधार पर ।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो, तो उसकी संरचना.––लागू नहीं ।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श लिया जाएगा.––जैसा विधि द्वारा आपेक्षित हो ।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.––किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है ।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.––सीधी भर्ती के मामले में, पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर, किया जाएगा, यदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगाय जिसका स्तर/पाठ्यक्रम आदि यथास्थिति, आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा ।

15क. संविदा नियुक्ति द्वारा पद पर नियुक्ति के लिए चयन.––इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां नीचे दिए गए निबन्धनों और शर्तों के अध्यधीन की जाएंगीः––

(I) संकल्पना.––(क) इस पॉलिसी के अधीन हिमाचल प्रदेश पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग में अनुसंधान सहायक को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा :

परन्तु संविदा की अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण–पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा तथा आचरण उस वर्ष के दौरान सन्तोषजनक रहा है और केवल तभी संविदा की अवधि नवीकृत/विस्तारित की जाएगी ।

(ख) पद का हिमाचल प्रदेष अधीनस्थ बोर्ड के कार्यक्षेत्र में आना.––निदेशक, पर्यावरण, विज्ञान एवं प्रोद्योगिकी विभाग रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात अध्यपेक्षा को सम्बद्ध भर्ती अर्भिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर के समक्ष रखेगा ।

(ग) चयन, इन नियमों में विहित पात्रता/शर्तों के अनुसार किया जाएगा ।

(II) संविदात्मक उपलब्धियां.––संविदा के आधार पर नियुक्त अनुसंधान सहायक को 14100/–रूपए की समेकित नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत की जाएगी । यदि संविदा में एक वर्ष से अधिक की बढौतरी की जाती है तो पश्चात्ववर्ती वर्ष (वर्षो) के लिए संविदात्मक उपलब्धियों में 423/–रुपए पद के पै बैण्ड का न्यूनतम जमा ग्रेड पै का तीन प्रतिशत की रकम वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

(III) नियुक्ति/अनुशासन प्राधिकारी.––निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग, हिमाचल प्रदेश नियुक्ति और अनुशासन प्राधिकारी होगा ।

(IV) चयन प्रक्रिया.––संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए, तो लिखित परीक्षा या व्यावहारिक परीक्षा

के आधार पर किया जाएगा, जिसका स्तर/पाठयक्रम इत्यादि संबद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा अवधारित किया जाएगा ।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति.––जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल अधीनस्थ चयन बोर्ड द्वारा समय–समय पर गठित की जाए ।

(VI) करार.––अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध–"ख" के अनुसार करार हस्ताक्षरित करना होगा ।

(VII) निबन्धन और शर्तें.––(क) संविदा के आधार पर नियुक्त व्यक्ति को 14100/–रुपए की नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत की जाएगी । संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष (वर्षों) के लिए संविदात्मक रकम में 423/–रुपए (पद के पे बैण्ड का न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध सुविधाएं जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । तथापि संविदा पर नियुक्त कर्मचारी बारह सप्ताह के प्रसूति अवकाश और दस दिन के चिकित्सा अवकाश के लिए भी हकदार होगा/होगी । वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी । संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय व अन्य किसी प्रकार का कोई अवकाश अनुज्ञात नहीं होगा :

परन्तु अनुपभुक्त आकस्मिक अवकाश और चिकित्सा अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रनीत नहीं किया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा । संविदा पर नियुक्त व्यक्ति, कर्त्तव्य (ड्यूटि) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा ।

(ङ) संविदा के आधार पर नियुक्त पदधारी, जिसने तैनाती के एक स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो ।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्यता प्रमाण–पत्र प्रस्तुत करना होगा । बारह सप्ताह से अधिक की गर्भवती महिला अभ्यर्थी प्रसव होने तक, अस्थाई तौर पर अनुपयुक्त बनी रहेगी । महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

(छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी पदधारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी ।

(ज) नियमित कर्मचारियों की दशा में, यथा लागू सेवा नियमों के उपबन्ध जैसे एफ0आर0–एस0आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पैन्शन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे । वे इस स्तम्भ में यथावर्णित उपलब्धियों इत्यादि के लिए हकदार होंगे ।

16. आरक्षण.––सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय–समय पर अनुसूचित जातियों/अनुसूचित जन–जातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बाबत जारी किए गए आदेशों के अधीन होगी।

17. विभागीय परीक्षा.––लागू नहीं ।

18. शिथिल करने की शक्ति.––जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से आदेश द्वारा, इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बाबत शिथिल कर सकेगी।

————————

उपाबन्ध–"ख"

अनुसंधान सहायक, वर्ग–III (अराजपत्रित) अलिपिक वर्गीय सेवाएं और हिमाचल प्रदेश सरकार के मध्य निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्रारुप

यह करार श्री/श्रीमति ..... पुत्र/पुत्री श्री ..... निवासी ....., संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् **"प्रथम पक्षकार"** कहा गया है), और हिमाचल प्रदेश की राज्यपाल, के मध्य, निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग हिमाचल प्रदेश, (जिसे इसमें इसके पश्चात् **"द्वितीय पक्षकार"** कहा गया है) के माध्यम से आज तारीख ..... को किया गया।

"द्वितीय पक्षकार" ने उपरोक्त **"प्रथम पक्षकार"** को लगाया है और प्रथम पक्षकार ने **अनुसंधान सहायक, वर्ग–III (अराजपत्रित)** के रुप में संविदा आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:––

1. यह कि **"प्रथम पक्षकार"** अनुसंधान सहायक के रुप में .....से प्रारम्भ होने और ....को समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए **"द्वितीय पक्षकार"** की सेवा में रहेगा। यह विनिर्दिष्ट रुप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस् अर्थात् ..... दिन को स्वयंमेव ही पर्यवसित (समाप्त) समझी जाएगी और सूचना नोटिस आवश्यक नहीं होगा :

   परन्तु संविदा की अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण करने के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण–पत्र जारी करेगा कि संविदा पर नियुक्ति व्यक्ति की सेवा तथा आचरण, उस वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी ।

2. प्रथम पक्षकार की संविदात्मक रकम 14100/–रुपए प्रतिमास होगी ।

3. **प्रथम पक्षकार** की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नही पाया जाता है या नियमित पदधारी उस रिक्ति के विरूद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है, तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी ।

4. संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । तथापि संविदा पर नियुक्त कर्मचारी बारह सप्ताह के प्रसूति

अवकाश और दस दिन के चिकित्सा अवकाश के लिए भी हकदार होगा/होगी। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी । संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय अन्य किसी प्रकार का कोई अवकाश अनुज्ञात नही होगा :

परन्तु अनुपभुक्त आकस्मिक अवकाश और चिकित्सका अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रनीत नहीं किया जाएगा ।

5. नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा । संविदा पर नियुक्त अनुसंधान सहायक, कर्त्तव्य (ड्यूटि) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा ।

6. संविदा पर नियुक्त पदधारी जिसने तैनाती के एक स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना आपेक्षित हो ।

7. चयनित अभ्यर्थी को सरकारी/रजिस्टीकृत चिकित्सा व्यवसायी से अपना आरोग्यता प्रमाण–पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में बारह सप्ताह से अधिक की गर्भावस्था, प्रसव होने तक उसे अस्थाई तौर पर अनुपयुक्त बना देगी । महिला अभ्यर्थियों का प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए ।

8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में, दौरे पर जाना अपेखित हो, तो वह उसी पद पर, जैसी नियमित प्रतिस्थानी पदधारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी ।

9. संविदा पर नियुक्त व्यक्ति (यों) को कर्मचारी सामूहिक बीमा योजना के साथ–साथ ई0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा। नियमित कर्मचारियों की दशा में, यथा लागू सेवा नियमों के उपबन्ध जैसे एफ0 आर0–एस0 आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पैन्शन नियम तथा आचरण आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे । वे इस स्तभ्भ में यथावर्णित उपलब्धियों इत्यादि के लिए हकदार होंगे ।

इसके साक्ष्यस्वरूप **प्रथम पक्षकार** और **द्वितीय पक्षकार** ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने–अपने हस्ताक्षर कर दिए हैं ।

साक्षियों की उपस्थिति में

1. .....
   .....
   .....
   (नाम व पूरा पता)
2. .....
   .....
   .....
   (नाम व पूरा पता)

(प्रथम पक्षकार के हस्ताक्षर)

साक्षियों की उपस्थिति में

1. .....
   .....
   .....
   (नाम व पूरा पता)

2. .....
.....
.....
(नाम व पूरा पता) (द्वितीय पक्षकार के हस्ताक्षर)

———————

[*Authority English Text of this Government Notification No. STE-B* (2)-8/2010 *dated as required under clause* (3) *of Article 348 of the Constitution of India*.]

ENVIRONMENT, SCIENCE & TECHNOLOGY DEPARTMENT

NOTIFICATION

Shimla-171002, *the* 21th *January,* 2014

No. STE-B (2)-8/2010.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment and Promotion Rules for the post of **Research Assistant, Class-III,** (Non-Gazetted) (Non-Ministerial Services) in the Department of Environment, Science & Technology, Himachal Pradesh, as per Annexure-A attached to this notification, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh, Department of Environment, Science & Technology, Research Assistant, (Class-III, Non-Gazetted) Non-Ministerial Services Recruitment and Promotion Rules, 2013.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

By order,
Sd/-
Pr. Secretary (Env. S&T).

———————

"ANNEXURE-A"

RECRUITMENT AND PROMOTION RULES FOR THE POST OF RESEARCH ASSISTANT (NON-GAZETTED) CLASS–III, IN THE DEPARTMENT OF ENVIRONMENT, SCIENCE & TECHNOLOGY, HIMACHAL PRADESH

1. Name of Post.—Research Assistant

2. Number of Post(s).—02 (Two)

3. Classification.—Class-III (Non-Gazetted) (Non-Ministerial Services).

4. Scale of Pay.—(*i*) Pay scale for regular incumbents:

Pay Band ₹ 10300-34800 + ₹ 3800/- Grade Pay

(*ii*) Emoluments for Contract Employees ₹ 14,100/- as per details given in Column 15-A.

5. Whether "Selection" post or "Non-selection" post.—Non applicable

6. Age for direct recruitment.—Between 18 and 45 years:

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on adhoc or on contract basis :

Provided further that if a candidate appointed on adhoc basis or on contract basis had become over-age on the date he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age-limit by virtue of his/her such adhoc or contract appointment :

Provided further that upper age-limit is relaxable for Scheduled castes/Scheduled Tribes/Other categories of persons to the extent permissible under the general or special order (s) of the Himachal Pradesh Government:

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government servants before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial of such constitutions of such Corporations/ Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/ Corporations /Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/ Autonomous bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

Notes:—

(1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting application or notified to the Employment Exchanges or as the case may be.

(2) Age & experience in the case of direct recruitment, relaxable at the discretion of the Himachal Pradesh Public Service Commission in case the candidate is otherwise well qualified.

7. Minimum educational and other qualifications required for direct recruit(s).—(*a*) *Essential Qualifications*(*s*).—M.Sc. in Environmental Science or B.E./B. Tech. Degree in Environmental Science or Environmental Engineering from a recongned University or an Institute duly recognized by the Central /H.P. Government.

(*b*) *Desirable Qualification*(*s*).—Knowledge of customs, manners & dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification(s) prescribed for direct recruit(s) will apply in the case of the promotee(s).—*Age* : Not applicable.

Educational Qualification(*s*):— Not applicable.

9. Period of probation, if any.—Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method(s) of recruitment, whether by direct recruitment or by promotion, deputation, transfer and the percentage of post(s) to be filled in by various methods.—100% on secondment basis failing which by direct recruitment on a 'regular' basis orby recruitment on contract basis, as the case may be.

11. In case of recruitment by promotion, secondment, transfer, grades from which promotion/ deputation, transfer is to be made.—On On secondment basis from amongst the incumbent(s) of this post subject to possessing of a recognized M.Sc. Degree in Environmental Science or B.E./B.Tech. Degree in Environmental Science or Environmental Engineering and working in the identical pay scales from other Himachal Pradesh Government Department(s)/ Board(s)/Corporation(s)/Autonomous Body(s).

12. If a Departmental Promotion Committee exists, what is its composition?.—Not applicable

13. Circumstances under which the H.P.P.S.C. is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of *viva-voce* test; if the Himachal Pradesh Public Service Commission or other recruiting authority, as the case may be, so consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the Commission/other recruiting authority, as the case may be.

15-A Selection for appointment to the post by contract appointment.— Notwithstanding anything contained in these Rules, contract appointments to the post will be made subject to the terms and conditions given below:—

(I) CONCEPT.—(*a*) Under this policy the Research Assistant, in the Department of Environment, Science & Technology, H.P. will be engaged on contract basis initially for one year; which may be extendable on year to year basis:

Provided that the extension/renewable of contarct period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only than his period of contract is to be renewed/ extened.

(b) POST FALLS WITHIN THE PURVIEW OF HP HPSSSB.—The Director, Environment, Science & Technology department Himachal Pradesh after obtaining the approval of the Government to fill up the posts on contract basis will place the requisition with the concerned recruiting agency *i.e.* Himachal Pradesh Subordinate Services Selection Board, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these R&P Rules.

(II) CONTRACTUAL EMOLUMENTS.—The Research Assistant appointed on contract basis will be paid consolidated fixed contractual amount @ ₹ 14,100/- P.M. (which shall be equal

to minimum of the pay band + grade pay). An amount of ₹ 423/- (3% of the minimum of pay band+ grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING/ DISCIPLIANRY AUTHORITY.—The Director, Environment, Science & Technology Department Himachal Pradesh will be appointing and disciplinary authority.

(IV) SELECTION PROCESS.—Selection for appointment to the post in the case of Contract appointment will be made on the basis of *viva-voce* test or if considered necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruitment agency i.e. Himachal Pradesh Subordinate Services Selection Board, Hamirpur.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.— As may be constituted by the concerned recruiting agency *i.e.* the Himachal Pradesh Subordinate Services Selection Board, Himirpur from time to time.

(VI) AGREEMENT.—After selection of a candidate, he/ she shall sign an agreement as per Annexure-B appended to these Rules.

(VII) TERMS AND CONDITIONS.—(a) The contractual appointee will be paid fixed contractual amount @ ₹ 14,100/- per month (which shall be equal to minimum of the pay band + grade pay). The contract appointee will be entitled for increase in contractual amount @ ₹ 423/- (3% of minimum of the pay band + grade pay of the post) for further extended years and no other allied benefits such as senior/selection scales etc. will be given.

(*b*) The service of the Contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/ conduct of the contract appointee is not found satisfactory.

(*c*) Contract appointee will be entitled for one day's casual leave after putting one month service. However, the contract employees will also be entitled for 12 weeks MaternityLeave and 10 days Medical leave. He/She shall not be entitled for Medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee:

Provided that the un-availed Caual Leave and Medical Leave can be accumulated upto the Calendar Year and will not be carried forward for the next Calendar Year.

(*d*) Unauthorised absence from duty without the approval of the Controlling Officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for contractual amount for the period of absence from duty.

(*e*) An official appointed on contract basis who have completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(*f*) Selected candidate will have to submit a certificate of his/her fitness from a Government/ Registered Medical Practitioner. Women candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorised Medical Officer/Practitioner.

(*g*) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart official at the minimum of pay scale.

(*h*) Provisions of Service Rule like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emolumenmts etc. as detailed in this column.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Depatmental Examination.—Not applicable

18. Powers to relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission, relax any of the provision(s) of these Rules with respect to any Class or Category of person(s) or post(s).

ANNEXURE –B

FORM OF CONTRACT/AGREEMENT TO BE EXECUTED BETWEEN THE Research Assistant (Non-Gazetted) AND THE GOVERNMENT OF HIMACHAL PRADESH THROUGH THE DIRECTOR OF ENVIRONMENT, SCIENCE & TECHNOLOGY DEPARTMENT.

This agreement is made on this……..….day of…..…….……in the year ……..between Sh./Smt…….....……. S/o/D/o ……...……. R/o ……..…… contract appointee, (hereinafter called the FIRST PARTY) AND The Governor, Himachal Pradesh through Director of Environment, Science & Technology Department, Himachal Pradesh (hereinafter "SECOND PARTY").

Whereas the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Section Officer on contract basis on the following terms and conditions:—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Research Assistant for a period of one year commencing on day of …….and ending on the day of ……It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day *i.e.* on ……and information notice shall not be necessary:

   Provided that for further extension/ renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only than the period of contract is to be renewed/ extended.

2. The Contractual appointee will be paid fixed Contractual amount @ ₹ 14,100/- per month (which shall be equal to minimum of pay band + grade pay). The contract appointee will be entitled for increase in contractual amount @ ₹ 423/- (3% of the

minimum of the pay band + grade pay of the post) for further extended years and no other allied benefits such as senior/selection scales etc. will be given.

3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/ conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the FIRST PARTY was engaged on contract.

4. Contractual appontee will be entitled for one day casual leave after putting one month service. However, the contract employee will also be entitled for 12 weeks Maternity leave and 10 days Medical leave. He/she shall not be entitled for Medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contractual appointee:

   Provided that un-availed Casual Leave and Medical Leave can be accumulated upto the Calendar year and will not be carried forward for the next Calender Year.

5. Unauthorised absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination of the contract. A Contractual Research Assistant will not be entitled for contractual amount for the period of absence from duty.

6. An official appointed on contract basis who has completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of Women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate shall be re-examined for fitness from an authorised Medical Officer/Practitioner.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counter-part officials at the minimum of pay scale.

9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESSES :

1. ----------

   (Name and Full Address)

(Signature of the FIRST PARTY)

2. ----------

   (Name and Full Address)

IN THE PRESENCE OF WITNESSES :

1. ----------

(Name and full address)

(Signature of the SECOND PARTY)

2. ----------

(Name and Full Address)

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 2nd *January,* 2014

No. EDN-A-Ka(1)-2/2012.—In pursuance of the Judgment delivered by the Hon'ble High Court in CWP No 1468 of 2013 alongwith others titled as Dhrub Dev Sharma & others versus State of HP (De-notifying of 08 Govt. Colleges) on 18th June, 2013, the Governor, Himachal Pradesh is pleased to notify the guidelines regarding opening of new educational institutions *i.e.* Government Degree Colleges in the State to achieve the objectives of access, equity and quality in higher Education with immediate effect as under :—

1. The distance of existing nearby college to proposed college shall not be usually less then 25 KM**.** The distance condition can be relaxed depending upon the need of the area/towns where the existing colleges are overcrowded and having the enrolment of students more than 3000.

2. In thickly populated cities like Shimla, Mandi, Solan, Dharamshala, Una etc., where, there is huge rush of students and it is becoming increasingly difficult to run all the three streams in the presently available infrastructure, the matter to shift some streams like Arts/Commerce, which don't require laboratory/etc. to out side the cities for quality education, instead of starting new college shall be considered.

3. For opening of new colleges, the availability of students in the feeder institutions also need to be kept in view. If the feeder institutions have sufficient enrolment in 10+2 class *i.e.* 400 or more preferably in the schools within 10-12 KM radius, the matter for opening of new college may be considered subject to meeting of other parameters and keeping in view the geographical conditions of the area.

4. For establishment of new Govt. Degree Colleges, normally land measuring 35 bighas is required. This requirement will be sufficient for providing Arts, Commerce, Science Blocks and Administrative Block as well as residential / hostels. But, since only Arts stream classes will be started in the begining, this condition could be relaxed, keeping in view the local conditions. The total land requirement shall be earmarked as under:—

   (*a*) 10 bighas for construction of Teaching Blocks (Administrative, Arts & Science Blocks) as detailed above.

(*b*) 10 bighas for play ground and Stadium etc. for sports and other open-air-co-curricular activities.

(*c*) 5 bighas for constructing Hostels for boys and girls.

(*d*) 5 bighas for the construction of residential accommodation for the staff.

(*e*) 5 bighas for further expansion as per future requirements.

5. For opening of new government colleges, adequate budget provision for non recurring and recurring expenditure shall be made. Initially the Government will start only Arts Stream in the first phase, thus, around rupees five crore in non-recurring and one crore rupees for recurring expenditure shall be made available. Thereafter, while considering the matter of starting of Commerce and Science stream, the additional budget will be made available. These budget estimates are on the basis of the present prices and will be suitable enhanced in due course of time. The new college may only be started after ensuring availability of sufficient accommodation. The adequate budget provision for Hostels as per requirement and staff quarters shall also be separately made available in the following years.

6. In the beginning, new colleges will be started with English, History, Pol. Science, Hindi, Sociology, Economics, Maths, Sanskrit, Computer Application and Physical Education subjects. However, other subjects like Geography, Music, Pub. Administration, Philosophy, Psychology, Painting, Dance, J & MC, could be considered on demand basis from the students and keeping in view the availability of faculty/infrastructure. The Commerce stream in the college will be started after enrolment reaches around 400 students in all the three classes *i.e.* B.A.–I, II & III year, whereas starting of the science stream would be considered after the total enrolment of around 500 students. This will, however be subject to meeting of the other parameters and keeping in view the availability of faculty / infrastructure.

7. It may not be possible to start all the subjects in all the colleges in the begining. Therefore, it has been decided to start all the subjects, where the students enrolment in Arts stream is more than 1000. However, the permission of starting of all the subjects will be granted by the Government after considering the detailed proposal from the Principal through Director of Higher Education, keeping in view the availability of infrastructure etc.

8. The classes in new colleges shall be started when at least one post of Principal, one post of Asstt. Professor in each subject, one librarian (College Cadre) and non-teaching *i.e.* one Superintendent Gr-II, one Sr. Asstt., two Clerks, three peons and two chowkidars are created and filled up to look after the Administrative, Academic & other College developmental activities.

9. Preference shall be given to open at least one new college in every Revenue Sub Division subject to the fulfillment of all other requirements/conditions as repeated above.

10. The provisions contained above may be considered for relaxation by the State Govt., keeping in view the unique geographical, social or demographic conditions in order to improve access, equity and excellence in higher educations.

By order,
Sd/-
Pr. Secretary (*Education*).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 16th *January,* 2014

No. EDN-A-Ka(4)-1/2002.—In supersesssion of this Department's notification of even No. dated 22nd February, 2010, the Governor, Himachal Pradesh is pleased to re-constitute the Himachal Sanskrit Academy, in accordance with the section 6 of the constitution of Academy, as under with immedicate effect :—

1.	Hon'ble Chief Minister	. . *Chairman*
2.	Hon'ble Education Minister / Chief Parliament Secretary (Education)	. . *Senior Vice- Chairman*
3.	Principal Secretary (Finance)	. . *Member*
4.	Principal Secretary (Hr. Education)	. . *Member*
5.	Director of Higher Education	. . *Member*
6.	Director, Language, Art & Culture	. . *Member*
7.	Professor A.N.D. Vajpai, Vice-Chancellor HP University, Shimla-05	. . *Senior Sanskrit Scholar*
8.	Prof. Kaushalya Chauhan, HOD, Sanskrit HP University, Shimla-05	. . *Non-Official Member*
9.	Prof. Virender Kumar Mishr, (Retd) HP University, Shimla – 05	. . *Non-Official Member*
10.	Acharya Bali Ram Shastri, (Retd) Vill – Dhadhog, *via* Mashovra, Distt – Shimla (HP)	. . *Non-Official Member*
11.	Acharya Madan Mohan (Retd) Narayan Nivas, Tuto, Shimla	. . *Non-Official Member*
12.	Acharya Keshav Sharma (Retd) Divya Deep, Tank Road, Solan (HP)	. . *Non-Official Member*
13.	Principal Prem Lal Gautam (Retd) Govt. Sanskrit College , Rabon, Solan	. . *Non-Official Member*
14.	Dr. Manohar Lal Arya, Pravan Kutir, Jyanti Vihar, Kangra	. . *Non-Official Member*
15.	Principal Sudesh Gautam Adrash Sanskrit College Jangla, Distt. Shimla	. . *Non-Official Member*
16.	Acharya Ramanand, Anand Nivas, Nangal Devi, Theog, Distt. Shimla	. . *Non-Official Member*
17.	Prof. Keshav Sharma, Sanskrit Research Institution Mashobara, Distt. Shimla	*Non-Official Member*
18.	Acharya Mast Ram Sharma, (Retd OSD) Acharya Niwas, Majyat, Tuto, Shimla	*Member Secretary*

By order,
Sd/-
Pr. Secretary (*Education*).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 09th *October*, 2013

No. EDN-A-Ka(1)-8/2012.—The Governor, Himachal Pradesh is pleased to order the naming of Government College of Education, Dharamshala, District Kangra (H.P.) as **Government College of Teacher Education, Dharamshala District Kangra (H.P.)** with immediate effect in public interest.

By order,
Sd/-
Pr. Secretary (*Education*).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 19th *November,* 2013

No. EDN-A-Ka(1)-8/2012.—The Governor, Himachal Pradesh is pleased to order the naming of Government College Haripur at Manali, District Kullu (H.P.) as **Jawahar Lal Nehru Government College Haripur at Manali District Kullu (H.P.)** with immediate effect in public interest.

By order,
Sd/-
Pr. Secretary (*Education*).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 15th *January,* 2014

No. EDN-A-Ka(1)-1/2014.—The Governor, Himachal Pradesh is pleased to order to open the following new Government Degree College(s) with effect from 2014-15 *i.e.* from the session June, 2014, in public interest :—

1. Government Degree College Nagrota Surian, Distt. Kangra (H.P).
2. Government Degree College Rewalsar, Distt. Mandi (H.P).
3. Government Degree College Lad Bharol, Distt. Mandi (H.P).
4. Government Degree College Sandhole, Distt. Mandi (H.P).

5. Government Degree College Dharampur, Distt. Solan (H.P).

6. Government Degree College Diggal, Distt. Solan (H.P).

7. Government Degree College Sarahan, Distt. Sirmour (H.P).

8. Government Degree College Nankhari, Distt. Shimla (H.P).

9. Government Degree College Kumarsain Distt Shimla (H.P).

The Governor, Himachal Pradesh is further pleased to order the creation of following teaching and non-teaching posts for the above mentioned each newly opened Government Degree Colleges :—

Sr. No.	Category/Name of Post(s)	Pay Band/Scale	No of Post(s)
(*a*)	Principal	Rs. 37400-67000+GP 10000	01 (One)
(*b*)	Assistant Professor for subject English, History, Hindi, Sociology, Economics, Math and Sanskrit (one post of each subject).	Rs. 15600-39100 + GP 6000 (For regular appointee) Rs. 15600 + 6000 = 21600/- PM (For contract appointee)	07 (Seven)
(*c*)	Librarian (College Cadre)	Rs. 15600-39100 + GP 6000 (For regular appointee) Rs. 15600 + 6000 = 21600/- PM (For contract appointee)	01 (One)
(*d*)	Superintendent Gr-II	Rs. 10300-34800+ GP- 4800	01 (One)
(*e*)	Senior Assistant	Rs. 10300-34800+ GP- 4400	01 (One)
(*f*)	Clerk	Rs. 5910+GP-1900 = 7810/- PM (For Contract appointee) Rs. 5910-20200+GP-1900 (For initial two years of regular service) Rs. 10300-34800 + GP- 3200 (Given after 2 years of regular service)	02 (Two)
(*g*)	Peon	Rs. 4900+GP-1300 = 6200/- PM (For Contract appointee) Rs. 4900-10680+ GP- 1300 (For initial two years of regular service) Rs. 4900-10680+ GP- 1650 (Given after 2 years of regular service)	03 (Three)
(*h*)	Chowkidar	-do-	02 (Two)
		Total Posts	**18**

The expenditure will be incurred under Major Head 2202-03- 103-01-Soon-Non-Plan for smooth functioning of these colleges.

This issues with prior concurrence of the Finance Department obtained vide their U.O. No 52755759-Fin-E/2013 dated 04th January, 2014.

By order,
Sd/-
Principal Secretary (*Education*).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 29th *May,* 2013

No. EDN-A-Kha(6)-3/2009-Loose.—Smt. Gita Sarup Mehta, Lecturer in Economics (College Cadre), Class-I (Gazetted) posted at Government College Sanjauli (Shimla), working in the Higher Education Department has tendered a notice on 20-03-2013 for voluntary retirement due to her personal medical and family circumstances.

The date of birth of the said officer is 09-12-1961. She joined Government service on 06 11-1989 and remained on Extra Ordinary Leave *w.e.f.* 03- 10-2003 to 27-03-2006, 01-10-2009 to 31-07-2011 and 01-08-2011 to 27-05-2013.

Therefore, keeping in view the circumstances mentioned in the notice the Governor, Himachal Pradesh is pleased to accept the pre-mature retirement of said Smt. Gita Sarup Mehta, Lecturer in Economics (College Cadre), Class-I (Gazetted), posted at Government College, Sanjauli (Shimla) by invoking the provisions laid down under Sub-Rule (2B) of Rule-3 of the H.P. Civil Services (Premature retirement) Rules, 1976 *w.e.f.* 28th May, 2013 (A.N.) subject to the condition that all the outstanding amount recoverable from her will be deducted from the dues payable to her, if any.

By order,
Sd/-
Secretary (*Education*).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, 1st *January*, 2014

No: Sharm (A) 7-1/2005 (Awards) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1.	156/2013	S/Shri Padma Dolkar V/s E.E. I&PH, Kaza.	01-10-2013
2.	222/2012	Arivind Kumar V/s Director Kayakalp Palampur.	-do-
3.	363/2012	Naresh Kumar V/S E.E. I&PH Dharamshala.	-do-
4.	220/2012	Bam Dev V/S Director Kayakalp Palampur.	-do-
5.	218/2012	Pritam Chand V/s -do-	-do-
6.	364/2012	Ram Kumar V/s Cozy Tech Ply Form.	-do-
7.	308/2012	Ramesh Chand V/s E.E.HPPWD. Baijnath.	-do-
8.	309/2012	Chuni Lal V/s -do-	-do-
9.	266/2012	Raj Kumar V/s E.E.HPPWD, Ghumarwin.	-do-
10.	265/2012	Prem Lal V/s -do-	-do-

11.	367/2012	Rakesh Kumar V/s E.E.HPPWD, Joginder Nagar.	-do-
12.	346/2012	Gandhi Ram V/s -do-	-do-
13.	342/2012	Madan Lal V/s -do-	-do-
14.	333/2012	Kanta Devi V/s -do-	-do-
15.	316/2012	Mangli Devi V/s -do-	-do-
16.	35/2013	Praveen Kumar V/s International Car&Motors.	03-10-2013
17.	127/2011	Balbir Singjh V/s Conservater Swan River.	-do-
18.	312/2012	Rajeev Kumar V/s HPSEB, Bilaspur	14-10-2013
19.	63/2013	Lekh Ram V/s E.E. HPSEB Joginder Nagar.	15-10-2013
20.	294/2012	Dila Ram V/S E.E. HPPWD Dharampur.	-do-
21.	359/2012	Naresh Kumar V/s -do-	-do-
22.	357/2012	Bir Singh V/s -do-	-do-
23.	130/2011	Gurmail Singh V/s M/s Nispo Polyfabric.	-do-
24.	2812012	Jagdish Chand V/s E.E$. HPSEB Joginder Nagar.	-do-
25.	133/2011	Rajesh Kumar V/s D.F.O. Shamkshi.	-do-
26.	80/2011	Pradhan HRTC V/s R.M. HRTC, Dehra.	22-10-2013
27.	44/2011	Secy. H.P. Parivahan V/s R.M. Pathankot.	-do-
28.	297/2012	Ambika Singh V/s State of H.P.	-do-
29.	01/2013	Suresh Kumar V/s President Truck Opt. Society.	26-10-2013
30.	289/2012	Mangal Nath Sharma V/s M.D. H.P. Agri. Mkt. Board.	-do-
31.	495/2009	Moti Ram V/s E.E. HPPWD Killer.	28-10-2013
32.	16/2013	Bego Devi V/s -do-	-do-
33.	17/2013	Ajit Paul Singh V/s M/s Fultron India.	31-10-2013

By order,
R. D. DHIMAN,
Pr. Secretary (Labour & Employment).

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 222/2012

Date of Institution : 17.4.2012

Date of Decision : 01.10.2013

Shri Arvind Kumar s/o Late Shri Jagdish Chand, r/o Village and P.O. Arth, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : 0Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. S.K. Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Arvind Kumar S/O Late Shri Jagdish Chand, Village and P.O. Arth, Tehsil Palampur, District Kangra, H.P. by the Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P. w.e.f. 31-07-2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as a Plumber w.e.f. 28.12.2006. He was drawing Rs.3,500/- per month as salary. He continuously worked as such up-to 31.7.2010 as well as completed 240 days of work in each and every calendar year of his employment. During the service tenure, his work and conduct was satisfactory. No complaint was received against him by the management/trust/respondent. Even his explanation was not called for the misconduct, if any. To his utter surprise, a letter dated 31.7.2010 was received by him. As per the said letter, his services were terminated from 31.7.2010 itself. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted for the misconduct, if any. No inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were not paid to him by the respondent at the time of the disengagement of his services. The seniority list of security guards was not supplied to him by the respondent when his services were dispensed with. The persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after the termination of his services, the respondent/management appointed new/fresh hands through Jai Prakash Associates Pvt. Ltd. He was not given an opportunity of re-employment. The employees of the respondent/trust had formed a workers' union under the Trade Unions Act, 1926. He (petitioner) was a member of the said union. Due to the trade union activities, his services were disengaged by the respondent alongwith the President and three members of the union. The same amounts to unfair labour practice. From the date of his disengagement, he is unemployed. He is/was the only earning member in the family. After the termination of his services, he approached the respondent time and again for reemployment, but in vain. Demand notice dated 10.2.2011 served upon the respondent by him did not have the desired effect. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"i) The Hon'ble Court may kindly be set aside the illegal termination order dated 31.07.2010 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority with all other consequential service benefits.

ii) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since the appointment of the petitioner was purely temporary and contractual in nature. The institution is a charitable trust. It is not covered by the provisions of the Act. The claim petition is misconceived. The petitioner has intentionally suppressed the true and correct facts from the Court because of which he is not entitled to any relief.

On merits, it has not been specifically denied that the services of the petitioner were engaged as a Plumber w.e.f. 28.12.2006. However, it has been pleaded that the appointment of the petitioner was purely contractual. The services of the petitioner were engaged from time to time on contract basis by issuing the appointment letters in his name. In the letters of appointment, it has been clearly mentioned that the services of the petitioner can be dispensed with during the contract period if the circumstances so warrant and after the contract period is over. The claimant/petitioner was appointed for one year on contract basis vide letter dated 04.7.2009. The management took a decision to reduce the staff strength in different branches. For the said reason, the services of the petitioner were disengaged w.e.f. 31.7.2010. No person junior to the petitioner has been retained in service. Even no new/fresh hands have been appointed. The services of the petitioner were engaged as a Plumber on contract basis. There is/was no need to supply the seniority list of the security guards to him. The services of the petitioner and others have not been disengaged on account of the trade union activities as claimed. It has been owned that a demand notice was issued by the petitioner and conciliation proceedings were initiated. The petitioner is gainfully employed. No provision of the Act has been infringed. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that the work for which he was employed is of a permanent nature. Contractual appointment was given to him only with a view to throw him out of the job without any notice and paying the retrenchment compensation.

5. Per order dated 16.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.7.2010 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Arvind Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had gone through the contents of the appointment letter dated 05.1.2010, the copy of which is Ex. RB. He joined the service only after admitting the terms and conditions of the appointment to be correct. He admitted that earlier also, his services used to be engaged by the respondent on contract basis for a specific period from time to time. Letter dated 31.7.2010 (Ex. RA) was received by him from the respondent. He admitted that only he and Shri Dinesh Kumar were working as plumbers with the respondent. He also admitted that Shri Dinesh Kumar was appointed earlier to him and the workers' union came into existence on 16.11.2010. He even admitted that the management had decided to terminate the services of the temporary staff due to the non availability of the budget. He denied that he has instituted a phoney petition at the behest of Shri Chandan Sood, Pradhan of the workers' union, to gain the employment in an unlawful manner.

9. Conversely, Shri Sudershan Sharma, Director KAYAKALP, V.M.R.T., Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the services of the petitioner were disengaged, neither one month notice was given to him nor the retrenchment compensation was paid. He denied that the petitioner was not a contractual employee and his services have been terminated in a wrongful manner.

10. Exts. RW1/B to E are the copies of the appointment letters which were issued by the respondent/trust in the name of the petitioner. They unfold that the services of the petitioner used to be engaged purely on contractual basis for a fixed period.

11. It is an admitted fact that the services of the petitioner were engaged as an Assistant Plumber by the respondent. The latter has not denied the fact that the petitioner was initially employed on 28.12.2006 and he worked up-to 31.7.2010. Admittedly, the services of the petitioner were disengaged by the respondent w.e.f. 31.7.2010 (afternoon) per letter of even date, the copy of which is Ex. RA. The petitioner (PW1) in his cross-examination admitted that the respondent/management had taken a decision to remove from service the temporary staff due to the non availability of the budget. In Ex. RA also, it has been mentioned that upon reviewal of staff strength in different branches of Kayakalap and the decision taken for effecting reduction, the services of the petitioner are no longer required and are terminated.

12. Ex. RB is the copy of the last appointment letter dated 5th January, 2010, which was issued in favour of the petitioner by the respondent. It depicts that the services of the petitioner were engaged on payment of fixed salary of Rs.3,500/- per month purely on contract basis initially for a period of one year from the date of his joining. In Ex. RB, it has been highlighted that the contractual appointment is purely temporary. The petitioner shall not be entitled to the regular

appointment or continuation of the contractual appointment beyond the period of appointment. It has also been stipulated that if the circumstances so warrant the contractual appointment can be terminated at any time during the contract period. By taking recourse to this subsequent condition/clause of the appointment letter, the services of the petitioner have been disengaged by the respondent on 31.7.2010 during the currency of the contract period, which as per the appointment letter Ex. RB, was to come to an end on 04.1.2011.

13. Copy of the service rules framed by the respondent relating to the plumbers is there on the file. They show that if the circumstances so warrant, the contractual appointment can be terminated at any time during the contract period. The admissions made by the petitioner (PW1) make it clear that the respondent/management had decided to terminate the services of the temporary staff due to the financial constraints. The assertion of the petitioner that his services were disengaged on account of the union activities seems to be totally false and baseless as it has come in evidence that the workers' union was formed on 16.11.2010, whereas the services of the petitioner were dispensed with on 31.7.2010.

14. The story put forth by the petitioner that his services were disengaged during the contract period as a measure of punishment by the respondent is untrue. Section 2(oo) of the Act reads thus:-

> "[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the service of a workman on the ground of continued ill-health;]"

15. As already mentioned, the services of the petitioner were disengaged by the respondent during the contract period under a stipulation in that behalf contained in the appointment letter dated 05.1.2010 (Ex. RB). The same does not come within the mischief of the word 'retrenchment' as defined in the Act.

16. Otherwise too, the petitioner (PW1) admitted that only he and Shri Dinesh Kumar were working as plumbers with the respondent. Shri Dinesh Kumar was appointed earlier to him. This indicates that the petitioner was the junior between the two plumbers appointed by the respondent. He (petitioner) has failed to disclose the name of any person junior to him who was retained in service by the respondent at the time of his disengagement. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondent after the termination of his services.

17. Such being the situation, I have no hesitation to conclude that the respondent has not flouted the provisions of Sections 25-F, 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent cannot be termed as 'retrenchment' particularly when the terms

and conditions of engagement were to the knowledge of the petitioner as well as he joined the service after admitting the same to be correct.

18. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

19. This issue is decided against the petitioner and in favour of his opponent.

ISSUE NO. 2

20. Keeping in mind my findings on issue No.1 above, it is held that the claim petition is not maintainable in the present form.

21. Moreover, the terms and conditions relating to the engagement of the petitioner as contained in the appointment letters make it abundantly clear that the period of contractual appointment can be further extended at the mutual discretion of both the parties. At the cost of reiteration, I will like to add that the term of contractual appointment of the petitioner as per the appointment letter dated 05.1.2010 (Ex. RB) was for a period of one year from the date of the joining of the petitioner. Thus, the term of contractual appointment of the petitioner/claimant came to an end on 04.1.2011. On the expiry of the period of the contractual appointment, there cannot be an automatic extension of the period of the engagement of the services of the petitioner. As already mentioned, the term of contractual appointment can be further extended at the mutual discretion of both the parties only. In view of these facts, the petitioner has no right to continue in service after 04.1.2011 and the respondent cannot be directed to reinstate his services.

22. This issue is also decided against the petitioner.

ISSUE NO. 3

23. Taking into consideration my findings on issue No.1, it is held that the petitioner has concealed the true and material facts from the Court. For the said reason also, he is required to be shown the doors of the Court.

24. This issue too is decided against the petitioner and in favour of his adversary.

RELIEF (ISSUE NO. 4)

25. As a sequel to my findings on the issues No. 1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 363/2012

Date of Institution : 05-11-2012

Date of Decision : 01-10-2013

Sh. Naresh Kumar s/o Sh. Bhajan Ram, r/o Village and P.O. Pasu, Tehsil Dharamshala, Distt. Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, I & PH Division, Dharamshala, Distt. Kangra, H.P.

..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Pradeep Dogra, Adv.

For the Respondent. : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Naresh Kumar s/o Sh. Bhajan Ram, VPO Pasu, Tehsil Dharamshala, Distt. Kangra, (H.P.) by the Executive Engineer, IPH Division, Dharamshala, Distt. Kangra w.e.f. 25.4.2000, without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of May, 1996. During the service tenure, his work and conduct was up-to the mark. No complaint was received against him by the respondent/department. On 25-04-2000, his services were terminated by the respondent without any justification with intent to victimize him. He had completed more than 240 days of work in each and every calendar year of his engagement. Similarly situated workmen and the persons junior to him (petitioner) were retained in service by the respondent at the time of his termination. The respondent failed to abide by the principle of 'last come first go'. After his retrenchment, new/fresh hands have also been engaged by the respondent. No permission under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) was obtained from the Government by the respondent before the disengagement of his (petitioner's) services. Earlier also, in the month of May, 1999, his (petitioner's) services were terminated by the respondent along-with the other workmen without any rhyme and reason. He and the other workmen instituted an Original Application bearing O.A(D)No.192/1999 titled as Ravi Kumar & others –vs-State of H.P. before the erstwhile Hon'ble H.P. Administrative Tribunal. Such Original Application was decided in favour of the workmen/labourers by the Hon'ble Administrative Tribunal on 24-04-1999. The respondent was directed to reengage the services of the workmen

including him (petitioner). A direction was also issued by the Hon'ble Administrative Tribunal to the respondent not to give fictional breaks in service to the petitioners / workmen. Pursuant to the order dated 24-04-1999 passed by the Hon'ble Administrative Tribunal, the services of all the daily wagers including him(petitioner) were reengaged by the respondent. They were provided the same status. Muster rolls were also issued in their names by the respondent. After the expiry of a few months, the respondent again terminated his(petitioner's) services along-with the other labourers with a malafide intention on 25-04-2000. The workmen, who had preferred an Original Application (D)No.192/1999, were once again removed from service by the respondent. Thereafter, he (petitioner) and others instituted Original Application No. 280/2000 before the Hon'ble Administrative Tribunal against the respondent for committing contempt of the Court and for reengagement. The said Original Application was dismissed by the Hon'ble Administrative Tribunal for want of jurisdiction. Liberty was given to him (petitioner) and the other workmen to approach the competent Court/forum for the redressal of their grievances. One Sh. Ravinder Kumar had joined the service along with him (petitioner). He was allowed to work continuously by the respondent. The services of Sh. Ravinder Kumar have also been regularized by the respondent/department. All the workmen, who had instituted the above numbered Original Application, have been reengaged by the respondent except him (petitioner) and Sh. Raj Kumar. The names of the workmen who have been re-employed are S/Sh. Ravi Kumar, Suresh Kumar, Uttam Chand and Brahm Dass. From the date of his unlawful termination, he(petitioner) is unemployed. During the break period also, he was not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "the respdt may please be directed to re-engage the applicant during the pendency of the case and he may please be re-instated in service with all consequential benefits by setting aside verbal as well as written order, if any, and the respdt may also be directed to pay compensation for failure to comply with the various provisions of law, in the interest of natural justice and fair play. It is further prayed that any other relief may also be passed to the applicant and against the respdt which this Hon'ble Tribunal may deem fit, in the interest of justice."

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. He has misrepresented himself and has approached the Court by concealing the material facts. The claim petition is bad on account of delay and laches on the part of the petitioner. He is estopped from filing the claim petition by his act and conduct.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar. However, it has been pleaded that the petitioner and the other similarly situated workmen (total numbering 6) were engaged initially for 89 days in the month of May, 1996, as seasonal labourers for undertaking the additional work. The period of engagement of the petitioner and his companions was extended from time to time as per the availability of works and funds. The services of all the 6 seasonal /additional workmen were regulated by maintaining a separate register. The abstract of the register pertaining to the petitioner is annexure R-I. All the seasonal workers were duly apprised about their service conditions at the time of the appointment. The petitioner and others continued working under him(respondent) without any protest. In March, 2000, due to the paucity of the funds and work, it became difficult to continue the services of all the

seasonal workers. Thus, one month notice dated 25-03-2000 under Section 25-F of the Act was issued to all the seasonal labourers since some of them had completed 240 days of continuous service in a block of 12 calendar months preceding the date of their disengagement i.e. 25-04-2000. In case of the petitioner, no notice under Section 25-F of the Act was required to be served as he did not complete 240 days of continuous service. The services of the petitioner and other similarly situated workmen were retrenched in accordance with law. No person junior to the petitioner pertaining to the same category was retained in service at the time of the disengagement of the services of the petitioner. All the seasonal workers were retrenched along with the petitioner. It stands admitted that Original Application No. (D) 192/1999 and O.A.No.280/2000 were preferred before the Hon'ble Administrative Tribunal. The order dated 24-09-1999 pronounced by the Hon'ble Administrative Tribunal was implemented in letter and spirit. Original Application No.(D) 280/2000 was dismissed as withdrawn. The petitioner cannot claim parity with Sh. Ravinder Kumar who is/was not a seasonal worker. Moreover, Sh. Ravinder Kumar was engaged in the month of February, 1996 in I & P.H. Division, Thural. He (Sh. Ravinder Kumar) joined his (respondent's) office in the month of October, 1997. S/Sh. Ravi Kumar, Suresh Kumar and Brahm Dass were the seasonal workers like the petitioner. Their services were also retrenched along with the petitioner. Sh. Ravi Kumar etc. have been reengaged as per the Awards passed by this Court. S/Sh. Raj Kumar and Uttam Chand, who too were the seasonal labourers, are no longer in service in his (respondent's) office. The petitioner is gainfully employed as an agriculturist. The instant industrial dispute has been raised by him at a belated stage. The dispute has become stale and faded away. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 11-03-2013, following issues were struck :

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 25-04-2000 is illegal and unjustified as alleged? ..*OPP*..

2. Whether the petitioner has a cause of action? ..*OPP*.

3. Whether the petition is not maintainable in the present form ? ..*OPR*.

4. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR*.

5. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.

6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR*.

7. Relief.

6. I have heard the ld. counsel for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : Not pressed

Issue No. 5 : No

Issue No. 6 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Sh. Naresh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that 06 labourers (including him) had instituted the Original Applications before the Hon'ble Administrative Tribunal as their service conditions were the same. He denied that his services were engaged for carrying out the seasonal works. He admitted that he was the junior most amongst the 6 workers. He denied that Sh. Ravinder Kumar was transferred to the office of the respondent from Thural Division and is senior to him. He also denied that to gain the employment in a wrongful manner, he has instituted a phoney petition.

9. Conversely, Sh. Deepak Garg, Executive Engineer, I & PH Division, Dharamshala (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Sh. Ravi Kant etc. (6 labourers) were working together. The services of S/Sh. Suresh Kumar, Ravi Kant and Brahm Dass has been reengaged as per the Orders of the Court. He admitted that when the services of the petitioner were engaged, it was not given in writing to him that he has been employed for undertaking the seasonal work(s) only. He denied that the services of the petitioner have been disengaged unlawfully.

10. Ex.PW1/B is the copy of the Judgment dated July 10, 2012 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No. 2118/ 2009 titled as Naresh Kumar –vs- State of Himachal Pradesh through Secretary (Labour & Employment) and others. It unfolds that the appropriate Government was directed to make a reference to the Labour Court regarding the industrial dispute going on between the parties.

11. Exts. PW1/C and PW1/D are the copies of the Awards dated 28-09- 2011 pronounced by my ld. Predecessor in Reference No. 22/2008 titled as Sh. Suresh Kumar -vs- The Executive Engineer, I&PH Division, Dharamshala and reference No. 23/2008 titled as Sh. Ravi Kant –vs- The Executive Engineer, I & PH Division, Dharamshala.

12. Ex. R-1 is the copy of the termination notice dated 25-03-2000 which was served upon the petitioner and his co-workers by the respondent. It depicts that the services of the petitioner and 5 others were retrenched w.e.f. 25-04-2000 (forenoon).

13. Ex. R-2 is the copy of the register relating to the seasonal workers allegedly maintained by the respondent.

14. Ex. RW1/B is the copy of the mandays chart pertaining to the petitioner.

15. Ex. RW1/C is the copy of the Order /Judgment delivered on 24-09-1999 by the Hon'ble Administrative Tribunal in O.A.(D) No.192/1999 titled as Sh. Ravi Kant and others -vs- State of H.P. through Secretary I&P.H., Shimla and others.

16. Ex. RW1/D is the copy of the Order dated October 28, 2005 passed by the Hon'ble H.P. Administrative Tribunal in O.A.(D)No.280/2000 titled as Ravi Kant and 2 others -vs- State of H.P. through Secretary Irrigation & Public Health, Shimla and others. It reveals that the Original Application instituted by the petitioner and others was dismissed as withdrawn.

17. Exts. RW1/E and RW1/F are the mandays charts/seniority list with respect to Sh. Ravinder Kumar s/o Sh. Moti Ram.

18. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding providing the breaks in service to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

19. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent in the month of May, 1996. The said fact finds support from the mandays chart Ex. RW1/B which is not in dispute. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner and his associates namely S/Sh. Ravi Kant, Suresh Kumar, Uttam Chand, Braham Dass and Raj Kumar were engaged for carrying out the seasonal works only. In the industrial disputes raised by S/Sh. Suresh Kumar and Ravi Kant, the respondent did not take the plea that they and their companions were appointed for undertaking the seasonal works only. For these reasons, the assertion of the respondent that the petitioner and Sh. Ravi Kant etc. were engaged for carrying out the seasonal activities seems to be totally false and baseless.

20. The mandays chart Ex. RW1/B unfolds that the petitioner worked with the respondent/department intermittently from 07-05-1996 to 24-04-2000. Admittedly, his services were disengaged by the respondent along with 5 other workmen w.e.f. 25-04-2000 (forenoon) after issuing the notice dated 25-03-2000, the copy of which is Ex. R1. The mandays chart Ex. RW1/B goes to show that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. The respondent has placed on the file the latest seniority list of the daily waged workers working under him. Its perusal discloses that after the disengagement of the services of the petitioner, many new /fresh hands were engaged by the respondent. There is nothing on the record to establish that at the time of engaging new / fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has contravened the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

22. Otherwise too, it is an admitted fact that the services of the similarly situated workmen namely S/Sh. Suresh Kumar, Ravi Kant and Braham Dass have already been reengaged

by the respondent. To avoid discrimination, the petitioner is also entitled to the relief(s) granted to his companions.

23. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

24. Taking into account my findings on the issue No.1, it is held that the petitioner has a cause of action.

25. This issue is also decided in his favour.

ISSUES NO. 3, 4 and 6.

26. Not pressed.

ISSUE NO. 5

27. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13-6-2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13-6-2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No. 4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09-10-2012. While setting aside the Award dated 13-06-2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

28. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Moreover, during the crossexamination, the petitioner admitted that he makes both the ends meet by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. Due to these reasons, he is not entitled to the back wages.

29. This issue too is decided in favour of the petitioner and against his opponent.

RELIEF (ISSUE NO. 7)

30. As a sequel to my findings on the issues No.1, 2 and 5 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of

his illegal termination i.e. 25-04-2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Govt. for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala,
H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 220/2012

Date of Institution : 17.4.2012

Date of Decision : 01.10.2013

Shri Bam Dev s/o Shri Om Prakash, r/o Village and P.O. Sulah, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. S.K. Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Bam Dev S/O Shri Om Prakash, Village and P.O. Sulah, Tehsil Palampur, District Kangra, H.P. by the Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P. w.e.f. 01-07-2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as Yoga & Nature Cure Assistant w.e.f. 29.10.2005. He continuously worked as such up-to 30.6.2010. His monthly salary was Rs.3500/-. During the entire service tenure, his work and conduct was fully satisfactory. No show cause/explanation letter was received by him from his superiors regarding the misconduct, if any. On 1st July, 2010 his services were terminated by the respondent by a verbal order. Before the termination of his services, neither he was charge-sheeted nor an inquiry was conducted against him for the misconduct, if any. One month pay in lieu of the notice period and retrenchment compensation were also not paid to him by the respondent/trust. He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his termination i.e. 01.7.2010. At the time of the retrenchment, the seniority list of the security guards was not supplied to him by the respondent. The persons junior to him were retained in service by the respondent/management. The latter failed to abide by the principle of 'last come first go'. Not only this, after his disengagement, new/fresh hands have been appointed by the respondent through Jai Prakash Associates Pvt. Ltd. He was not given an opportunity of re-employment. The employees of the respondent/trust had formed a workers union under the Trade Unions Act, 1926. He (petitioner) was a member of the said union. His services have been terminated alongwith the President and three other members of the union due to the union activities, which amounts to unfair labour practice. After the disengagement, he approached the respondent time and again for re-employment, but in vain. The demand notice served upon the respondent by him did not have the desired effect. He is/was the only earning member in the family. After the termination of his services, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"i) The Hon'ble Court may kindly be set aside the illegal termination order dated 01.07.2010 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority with all other consequential service benefits.

ii) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner did not complete 90 or 240 days of work preceding the date of his alleged ultimate termination i.e. 01.7.2010. The petitioner is gainfully employed. Earlier, he abandoned the job on 1st July, 2008. The said fact was admitted by the petitioner vide letter dated 19.4.2010. The trust is a charitable institution. The claim petition is not maintainable. The petitioner was working as a contractual appointee. The terms and conditions of the engagement as contained in the appointment letter make it clear that the services of the petitioner can be terminated at any time if the circumstances so warrant.

On merits, it has been owned that the services of the petitioner were engaged as a Yoga & Nature Cure Assistant on 29.10.2005. However, it has been denied that he worked continuously as such up-to 30.6.2010. Actually, the petitioner voluntarily left the service on 01.7.2008. Thereafter, he never turned up till 19.4.2010. On that day i.e. 19.4.2010, the petitioner submitted an application/letter to re-engage his services. On the basis of the request made by the petitioner, he was re-employed from 19.4.2010 to 30.6.2010. During the intervening period from 01.7.2008 to 18.4.2010, the petitioner was gainfully employed. He has concealed a material fact from the Court that he willingly abandoned the job on 01.7.2008 and did not work up-to 18.4.2010. On 1st July, 2010, the services of the petitioner were never terminated as alleged. He left the job once again after working for one month and 20 days only. The petitioner did not complete 240 days of work in any calendar year of his employment. After 01.7.2010, the petitioner never approached him (respondent) for re-engagement. The services of the petitioner and others were not terminated on account of the union activities as alleged. No person junior to the petitioner has been retained in service. Even after the alleged disengagement of the services of the petitioner, no new/fresh hands have been appointed. The management has nothing to do with any appointment made by Jai Prakash Pvt. Ltd.. The services of the petitioner were never engaged as a security guard. For this reason, the question of supplying the seniority list of the security guards to him does not arise. No workers' union existed uptil 30.6.2010. No provision of the Act has been flouted. Since the petitioner voluntarily left the service, he is not entitled to any protection under the Act. The claim petition is false and baseless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that the work for which he was employed is of a permanent nature. Contractual appointment was given to him only with a view to throw him out of the job without any notice and paying the retrenchment compensation.

5. Per order dated 16.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 01.7.2010 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Relief.

6. I have heard ld. AR/counsel for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Bam Dev stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he joined the service after going through the contents of the appointment letter as well as admitting the terms and conditions of employment to be correct. He also admitted that his services used to be engaged temporarily and on yearly basis. Exts. R1 to R3 are the copies of the appointment letters which were issued in his name. He denied that on 01.7.2008 he left the service. Self stated, the supervisor had told him that he should not report for duty. He admitted that on 19.4.2010, he had moved an application (Ex.R4) before the respondent. He even admitted that from the year 2008 to 2010, he was running a vegetable shop at Sulah. Volunteered, he was called by the respondent in the year 2010. He denied that he did not work for 90 days in the year 2010. He admitted that after 01.7.2010, he is continuously working as a vegetable seller. He further admitted that from the year 2008 to 18/19/4/2010, he did not serve under the respondent. He admitted that when he abandoned the job in the year 2008, he was the junior most Yoga and Nature Cure Assistant. He admitted that he worked for one month and 20 days only in the year 2010. During his service tenure, there was no workers union. He denied that he is not entitled to re-employment etc.

9. Conversely, Shri Sudershan Sharma, Director KAYAKALP, V.M.R.T., Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the services of the petitioner were disengaged, one month notice was not given to him. The retrenchment compensation too was not paid. Self stated, the petitioner was employed on 19/4/2010 and he worked for only two months.

10. It is the admitted case of the parties that the services of the petitioner were initially engaged as a Yoga & Nature Cure Assistant on 29.10.2005. The version of the petitioner that he worked continuously as such upto 30.6.2010 stands falsified in view of the admissions made by him as PW1. The petitioner (PW1) also admitted that his services used to be engaged by the respondent temporarily and on yearly basis from time to time as well as Exs. R1 to R3 are the copies of the appointment letters which were issued in his favour by the respondent. The petitioner (PW1) even admitted that he joined the service after reading the appointment letters as well as admitting the terms and conditions of the employment to be correct.

11. During the cross-examination, the petitioner (PW1) admitted that he had abandoned the job in the year 2008. At that time he was the junior most Yoga & Nature Cure Assistant. From the year 2008 to 2010, he ran a vegetable shop at Sulah. Even after 01.7.2010, he is working as a vegetable vendor.

12. There is no denial of the fact that on 19.4.2010, the petitioner had moved an application, the copy of which is Ex. R4 before the respondent. In the application, he admitted that due to certain family circumstances and the mistakes committed by him, he had voluntarily left the service. Now, he be reemployed. Pursuant to this application preferred by the applicant/petitioner, his services were engaged on contractual basis by the respondent from 19.4.2010 to 30.6.2010 only. The petitioner (PW1) admitted that from 01.7.2010 onwards he is dealing in the vegetables.

13. The version of the petitioner that his services were disengaged by the respondent due to union activities seems to be totally false and baseless since the petitioner (PW1) admitted that during his service tenure, there was no workers union. The assertion of the petitioner that his services were unlawfully terminated by the respondent w.e.f. 1st July, 2010 also seems to be totally false and baseless taking into account his act and conduct. The petitioner categorically admitted in the application dated 19.4.2010 (Ex. R4) that he had earlier left the service voluntarily. From the evidence available on the record, it can be gathered that the petitioner is telling the lies at every step

just to gain the employment by hook or crook. As already mentioned, his assertion that he served the respondent/trust continuously from 29.10.2005 to 30.6.2010 is totally false.

14. It is the basic law that a workman has to prove that he had worked for 240 days or more in a block of 12 calendar months anterior to the date of alleged termination. The evidence adduced by the parties clarifies that the petitioner served the respondent from 19.4.2010 to 30.6.2010 i.e. for less than 60 days. There is nothing to show that the petitioner had worked for 240 or more days as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

15. The petitioner has not disclosed the name of any person junior to him who was retained in service by the respondent at the time of his alleged retrenchment. Not only this, the petitioner failed to divulge the name of any person, whose services have been allegedly engaged by the respondent after the termination in question. The provisions of Sections 25-G and 25-H of the Act are also not attracted in this case. Moreover, the petitioner (PW1) in his cross-examination admitted that when he abandoned the service in the year 2008, he was the junior most Yoga & Nature Cure Assistant.

16. So far as the service rules relating to treatment assistants employed by the respondent/institution are concerned, they make it crystal clear that the contractual appointment can be terminated at any time during the contract period if the circumstances so warrant. In the present case, there is nothing to show that the services of the petitioner were disengaged during the contract period. Rather, as already mentioned, the period of his contractual appointment had come to an end on 30.6.2010. Section 2 (oo) (bb) of the Act postulates that the termination of the services of a workman as a result of the non renewal of contract of employment on the expiry of such contract period will not amount to retrenchment.

17. Such being the situation, I have no hesitation to conclude that the respondent has not contravened any provision of the Act. The petitioner willingly left the job on the expiry of the contract period. The avarice of the petitioner to gain employment in a wrongful manner has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

18. This issue is decided against the petitioner and in favour of the respondent.

ISSUE NO. 2

19. Taking into account my findings on issue No. 1 above, it is held that the claim petition is not maintainable in the present form. The petitioner, who is a liar, has suppressed the material facts from the Court because of which he is required to be non suited.

20. This issue is also decided against the petitioner.

RELIEF (ISSUE NO. 3)

21. In view of my findings on the issues No. 1 and 2, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 218/2012

Date of Institution : 17.4.2012

Date of Decision : 01.10.2013

Shri Pritam Chand s/o Shri Thakur Dass, r/o Village and P.O. Jandpur, Tehsil Baijnath, District Kangra, H.P. ..*Petitioner.*

Versus

The Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. S.K. Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether the termination of services of Shri Pritam Chand S/O Shri Thakur Dass, Village and P.O. Jandpur, Tehsil Baijnath, District Kangra, H.P. by the Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P. w.e.f. 19-06-2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as a Security Guard w.e.f. 10.11.2005. He was drawing Rs.3500/- per month as salary. He continuously worked as such up-to 19.6.2010 as well as completed 240 days of work in each and every calendar year of his employment. During the service

tenure, his work and conduct was satisfactory. No complaint was received against him by the management/trust/respondent. Even his explanation was not called for the misconduct, if any. To his utter surprise, a letter dated 19.6.2010 was received by him. As per the said letter, his services were terminated from 19.6.2010 itself. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted for the misconduct if any. No inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were not paid to him by the respondent at the time of the disengagement of his services. The seniority list of security guards was not supplied to him by the respondent when his services were dispensed with. The persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after the termination of his services, the respondent/management appointed new/fresh hands through Jai Prakash Associates Pvt. Ltd. He was not given an opportunity of re-employment. The employees of the respondent/trust had formed a workers' union under the Trade Unions Act, 1926. He (petitioner) was a member of the said union. Due to the trade union activities, his services were disengaged by the respondent alongwith the President and three members of the union. The same amounts to unfair labour practice. From the date of his disengagement, he is unemployed. He is/was the only earning member in the family. After the termination of his services, he approached the respondent time and again for reemployment, but in vain. Demand notice dated 10.2.2011 served upon the respondent by him did not have the desired effect. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "i) The Hon'ble Court may kindly be set aside the illegal termination order dated 19.06.2010 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority with all other consequential service benefits.
>
> ii) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner was appointed vide letter dated 23.10.2005 purely on contractual basis for a period of one year. The term of appointment of the petitioner could be extended at the mutual discretion of the parties. The contractual appointment of the petitioner was extended from time to time by issuing fresh appointment letters in his name. The terms and conditions of engagement are contained in the appointment letters. The petitioner was afforded contractual appointment per letter dated 14.11.2009 for a period of one year on the terms and conditions as detailed in such letter, which were duly accepted by him (petitioner). As per the terms of engagement contained in the appointment letter, the services of the petitioner were dispensed with on 18.6.2010 as no work was available for him. The claim petition is not maintainable. The trust is running a charitable institution. The provisions of the Act do not apply to the charitable institutions. The petitioner has intentionally and willingly suppressed the true and material facts from the Court because of which he is not entitled to any relief. He (petitioner) is gainfully employed in CSIR.

On merits, paras 1 to 7 of the reply read thus:-

> "1. In reply to para 1 of the petition: Not admitted. The petitioner has concealed the correct facts of his appointment as security guard. The petitioner was appointed as security guard on contract basis vide letter NO VMRT/YOGA Appts/1093-94 dated 23.10.2005 for a

period one year. The contractual appointment was purely temporary and tenure appointment. Even in the letter of appointment the entire terms and conditions were detailed after the expiry of contractual period, fresh appointment on contractual basis was issued. The last contractual appointment letter was issued on 14.11.2009 for a period of one year, but services were dispensed with on 18.6.2010 as there was no work for him. So the petitioner has absolutely no claim of service after 18.6.2010 and his services, has been rightly and legally dispensed with. The other facts detailed in this para have no relevance in case of contractual appointment. The petitioner was all aware about the contractual appointment has intentionally and willfully concealed this facts from this Hon'ble court and has based his petition on false and incorrect facts. The petitioner is not approaching this court with clean hands is not entitled for any relief.

2. In reply to para 2 of the petition: The contents are correct that the services of the petitioner after the expiry of contractual period were dispensed with. In face of purely contractual appointment no show cause notice or charge sheet; needs to be served as the petitioner is fully bond by the terms of his contractual appointment. The petitioner was also not entitled for one month notice The provisions of section 25-F(a) and (b), 25-F(c) are not at all applicable are attracted in case of contractual appointment. It is not out of place to mention that at the time of contractual appointment of the petitioner, the institute was having two security gates but subsequently Gate No.1 was taken over by M/s JP Associates and the Respondent required security arrangement only regarding Gate No.2, on this the authorities reviewed the matter and decided that the respondent institute has to lookafter only one security gate and as such services of two junior most security guards be dispensed with and the Respondent Institution was not in a position to keep extra staff when work was not available for them and as such the services of two junior most security guard Sher Singh and Pritam were dispensed with w.e.f. 18.6.2010. It was very clearly mentioned in their appointment letter under condition No.5 that if the circumstances so warrant. The services of the appointee can be terminated even before the contractual period in the fact of the case of the petitioner there was no requirement to send information under section 25-F(c) to the appropriate Govt. It is incorrect that the termination is null and void abinitio.

3. In reply to para 3 of the petition: Not admitted. The contents of the para are entirely incorrect and denied as such the petitioner never approached the respondent. The Conciliation Officer has acted arbitrarily and did not adhered to the request of the respondent. The Conciliation Officer was bent upon to decide the matter arbitrarily, unfairly and with biased approach. The Conciliation Officer has not acted with the ambit of section 12 of the Industrial dispute Act.

4. In reply to para 4 of the petition: Not admitted. The contents of the para are totally incorrect and misconceived. The petitioner was fully aware about his status in the seniority list and the petitioner and Pritam Chand were the Junior Most Security Guard and their services were rightly dispensed with. Moreover, in case of contractual appointment. The principle as mentioned is not at all attracted. It is totally incorrect that person junior to the petitioner have been retained. The Management of Kaya Kalp has not appointed new fresh hand in place of petitioner. It is also incorrect that there is any violation of section 25-H of the Act ibid. The seniority List are attached herewith.

5. In reply to para 5 of the petition: It is submitted that during the contractual appointment of the petitioner upto 18.6.2010, there was no workmen union in existance under the trade union Act. It is also false and incorrect that due to trade union activities, the services of the petitioner along with president of the union and other three members were terminated as alleged. There is no unfair labour practice on the part of the respondent as alleged. The rest of the contents of this para are incorrect and denied.

6. In reply to para 6 of the petition: The contents of the para are denied for want of knowledge that the petitioner is only bread earner of his family. It is totally incorrect that the petitioner is still enemployed and not gainfully employed anywhere. In fact, the petitioner is gainfully employed with CSIR Holta and as such is not entitled to file the present claim petition.

7. In reply to para 7 of the petition: The services of the petitioner which were purely temporary and for a contractual period have rightly been dispensed with. It is totally incorrect that the act of the respondent is highly unjustified, arbitrary, unconstitutional and against the Mandatory provisions of the Industrial Disputes Act".

In these circumstances, the respondent prays that the petition in hand being meritless, false and baseless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that the work for which he was employed is of a permanent nature. Contractual appointment was given to him only with a view to throw him out of the job without any notice and paying the retrenchment compensation.

5. Per order dated 16.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 19.6.2010 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Pritam Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services used to be engaged on temporary and yearly basis. On the completion of one year, the appointment letter for another year used to be issued in his name by the respondent. He admitted that he used to go through the contents of the

appointment letters as well as joined the duties after admitting the terms and conditions of engagement to be correct. Exts. R1 to R4 are the copies of the appointment letters which were issued in his favour by the respondent from time to time. J.P. Associates and the respondent are two different organizations. He admitted that after the disengagement of his services, no new security guard has been appointed by the respondent. After 19.6.2010, he is working with Fair and Lovely Security Services which he joined in the month of December, 2011. He admitted that the employees of the respondent/trust had formed a workers' union. Self stated, such union was made after his services were disengaged. He does not know that the union came into existence on 16.11.2010. He denied that he was the junior most security guard. Shri Sher Singh and others (security guards) were junior to him. He does not remember the names of the other security guards who were junior to him. He denied that Shri Sher Singh\ abandoned the job earlier to him (PW1). Volunteered, he and Shri Sher Singh were removed from service by the respondent at one and the same time. He admitted that he was a contractual employee. He denied that a phoney petition has been instituted by him at the instance of Shri Chandan Sood to gain the employment in an unlawful manner.

9. Conversely, Shri Sudershan Sharma, Director KAYAKALP, V.M.R.T., Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged in a wrongful manner.

10. Ex. RW1/B is the letter dated 18.6.2010 served upon the petitioner by the respondent. It depicts that consequent upon the reduction in sanctioned strength of the security set up in the institute, the services of the petitioner were terminated with immediate effect as the same were no longer required.

11. It is the admitted case of the parties that the services of the petitioner were engaged as a security guard in the year 2005 and he continuously worked as such up-to 18-19/6/2010. There is no denial of the fact that the services of the petitioner were disengaged with immediate effect per letter dated 18.6.2010, the copy of which is Ex. RW1/B. Exts. R1 to R4 are the copies of the appointment letters which were issued in the name of the petitioner by the respondent from time to time. The petitioner (PW1) admitted that he joined the service after reading the appointment letters as well as admitting the terms and conditions of the employment contained therein to be correct. Exts. R1 to R4 unfold that the services of the petitioner used to be engaged for a period of one year purely on contractual basis. The contractual appointment is/was to be further extended at the mutual discretion of both the parties. Condition No.5 of the appointment letters lays that if the circumstances so warrant, the contractual appointment can be terminated at any time during the contract period. The service rules framed by the respondent for the post of the security guards also contain the stipulation to the same effect.

12. Ex. R4 is the last appointment letter dated 14.11.2009 which was issued in favour of the petitioner by the respondent. It clarifies that the services of the petitioner were engaged as security guard for one year purely on contract basis on payment of the fixed salary of Rs.3,500/- per mensem. As per Ex. R4, the term of contractual appointment of the petitioner was to come to an end on

13. 11.2010. Admittedly, during the currency of the contract period, the services of the petitioner were disengaged by the respondent with immediate effect vide letter dated 18.6.2010, the copy of which is Ex. RW1/B. As already mentioned, Ex. RW1/B reveals that the services of the petitioner were terminated due to the reduction in sanctioned strength of security set up. Condition

No.5 of the appointment letter lays that if the circumstances so warrant the contractual appointment can be terminated at any point of time during the contract period.

13. Section 2(oo) of the Act postulates as under:-

"[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(d) voluntary retirement of the workman; or

(e) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(f) termination of the service of a workman on the ground of continued ill-health;]"

14. Taking into account clause (bb) of the above quoted Section, the disengagement of the services of the petitioner by the respondent does not come within the mischief of the word 'retrenchment' as defined in the Act.

15. The petitioner (PW1) in his cross-examination admitted that the workers union saw the light of the day after his services were dispensed with. He feigned ignorance about the fact that the workers' union came into existence on 16.11.2010. Therefore, the assertion of the petitioner that his services were terminated on account of the union activities is totally false and baseless.

16. The petitioner has failed to disclose the name of any person junior to him who were retained in service by the respondent at the time of the termination of his services. He (petitioner) has also not divulged the name of any person who was employed as a security guard after his alleged retrenchment.

17. That being so, it cannot be said that the respondent has contravened the provisions of Sections 25-F, 25-G and 25-H of the Act.

18. It appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

19. This issue is decided against the petitioner and in favour of his opponent.

ISSUE NO. 2

20. Keeping in mind my findings on issue No.1 above, it is held that the claim petition is not maintainable in the present form.

21. Moreover, the terms and conditions relating to the engagement of the petitioner as contained in the appointment letters make it abundantly clear that the period of contractual appointment can be further extended at the mutual discretion of both the parties. At the cost of reiteration, I will like to add that the term of contractual appointment of the petitioner as per the

appointment letter dated 14.11.2009 (Ex. R4) was for a period of one year from the date of the joining of the petitioner. Thus, the term of contractual appointment of the petitioner/claimant came to an end on 13.11.2010. On the expiry of the period of the contractual appointment, there cannot be an automatic extension of the period of the engagement of the services of the petitioner. As already mentioned, the term of contractual appointment can be further extended at the mutual discretion of both the parties only. In view of these facts, the petitioner has no right to continue in service after 13.11.2010 and the respondent cannot be directed to reinstate his services.

22. This issue is also decided against the petitioner.

ISSUE NO. 3

23. Taking into consideration, my findings on issue No.1, it is held that the petitioner has concealed the true and material facts from the Court. For the said reason also, he is required to be shown the doors of the Court.

24. This issue too is decided against the petitioner and in favour of his adversary.

RELIEF (ISSUE NO. 4)

25. As a sequel to my findings on the issues No. 1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 364/2012

Date of Institution : 05.11.2012

Date of Decision : 01.10.2013

Shri Ram Kumar s/o Shri Chotu Ram, r/o Village Polian Beet, P.O. Polian, Tehsil Haroli, Distt. Una, H.P. ..*Petitioner.*

Versus

The Managing Director, M/S Cozy Touch Poly Foams India (P) Ltd. Village-Hir Thada, P.O. Bidharwal, Laluwal, Tehsil Haroli, Distt. Una, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Manish Kumar, AR.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Ram Kumar S/O Sh. Chotu Ram, Village-Polian Beet, P.O. Polian, Tehsil Haroli, Distt. Una, H.P. by The Managing Director, M/S Cozy Touch Poly Foams India (P) Ltd., Village-Hir Thada, P.O. Bidharwal, Laluwal, Tehsil Haroli Distt. Una, H.P. w.e.f. 27-4-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent on 20.3.2010 as a Tailor Master. Identity Card No. 14, L.O. UNA was issued in his name by the respondent. The latter used to pay him Rs.3500/- per month as wages. He (petitioner) worked as a skilled worker in the factory of the respondent for stitching the mattresses. On 27th April, 2011, he (petitioner) was not allowed to enter the factory premises, which amounts to unfair labour practice. On the same day i.e. 27.4.2011, his services were terminated by the respondent by a verbal order without assigning any reason. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. The retrenchment compensation too, was not paid to him by the respondent/employer. The respondent did not take any permission from the concerned department to disengage his services. A demand notice dated 25.5.2011 was served upon the respondent by him, but in vain. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-B, 25-F and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as well as the Standing Orders framed by the Government of Himachal Pradesh.

As such, he (petitioner) prays that the retrenchment order dated 27.4.2011 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It stands admitted that the services of the petitioner were engaged for carrying out the tailoring work in the factory. However, it has been pleaded that the petitioner was appointed on 06.4.2010 (instead of 20.3.2010) as a semi-skilled worker on payment of the monthly wages of Rs.3,500/-. Identity Card was also issued in favour of the petitioner. The services of the petitioner were never disengaged as alleged. Actually, the petitioner voluntarily left the job without any intimation to him (respondent). The petitioner joined the other factory i.e. M/S. RJ Saints, Village Singan, Tehsil Haroli, District Una, H.P., on 26.4.2011. With effect from 27.4.2011, the petitioner is absent from his duties. Registered letters dated 13.8.2011, 28.9.2011 and 09.10.2011 were sent to the petitioner regarding his absence. No

reply to the letters was received from his side. It has been owned that a demand notice was sent by the petitioner. The demand notice was forwarded by the petitioner to him (respondent) on 21.6.2011 by registered post. The same was received by him (respondent) on 22.6.2011. Neither he (respondent) indulged in any unfair labour practice nor flouted any provision of the Act. The services of the petitioner were never terminated as alleged. He (petitioner) was given two chances to join his duty, but in vain. Third chance to rejoin the duty was afforded to the petitioner on 02.1.2013 before this Court, but the claimant/petitioner refused to join his duties. Since the petitioner voluntarily left the service and joined the other company, he is not entitled to any protection under the Act.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that he was working as a skilled labourer (tailor master). The salary of semi-skilled was being paid to him. Neither he (petitioner) joined any other factory/company nor he is working in the other factory/company even now. He is unemployed and stays at home.

5. Per order dated 18.6.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 27.4.2011 is illegal and unjustified as alleged? ..*OPP*.

2. Relief.

6. I have heard the ld. ARs for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Ram Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he absented from his duties on 27.4.2011. Self stated, his services were dispensed with. He admitted that the respondent sent various letters to him under registered cover regarding the absence from duty. Such letters were received by him. Their copies are Exts. R1 to R3. He denied that even after receiving the letters Exts. R1 to R3, he did not go to the factory/respondent. After 24.4.2011, he worked in another factory in village Singan. He admitted that the name of that factory is RJ Saints. He served RJ Saints for 10-15 days only and joined the said factory/company after the lapse of 1-2 months from 27.4.2011. He admitted that he joined RJ Saints on 26.4.2011. Again said he did not join the service in RJ Saints on 26.4.2011. He feigned ignorance about the fact that in the attendance register of RJ Saints, his presence has been marked on 26.4.2011 and the said register has been verified by the Labour Inspector. He denied that he worked in RJ Saints up-to 07.7.2012. He admitted that in the payment of wages register of

RJ Saints from April, 2011 to December, 2011, his signatures are there as a token of receiving the wages. RJ Saints used to pay him more than Rs.5,000/- each month, whereas, the respondent was paying him Rs.3800/- per mensem. He denied that he abandoned the job in the respondent/factory as RJ Saints paid him higher wages. He also denied that to gain the employment in a wrongful manner and out of the greed he has instituted a phoney petition.

9. Conversely, Shri Pritam Chand, an employee of RJ Saints, testified as RW1. He deposed that he has brought to the Court the adult workers register, attendance register, salary and wages register of the company as well as the record regarding making full and final payment to the petitioner. In accordance with their record, the petitioner joined the service on 26.4.2011. Ex. RW1/A is the copy of the adult workers register. The presence of the petitioner has been marked in the factory on 26.4.2011. The attendance register has been verified by an officer of RJ Saints and Labour Inspector, Una. The payment for five days i.e. from 26.4.2011 to 30.4.2011 amounting to Rs.600/- was made to the petitioner. The wages register bears the signatures of the petitioner. This register too has been verified by an officer of the company. They used to pay Rs.4,200/- every month as wages to the petitioner. The petitioner worked with them from 26.4.2011 to 07.7.2012. His presence is duly marked in the attendance register. The payment up-to 07.7.2012 was received by the petitioner after signing the wages register. When the petitioner left the service on 07.7.2012, no dues certificate Ex. RW1/B was signed by him (petitioner) and handed over to the company (RJ Saints).

In the cross-examination, he admitted that during the period of his employment the petitioner did not commit any fraud.

10. RW2 is Shri Manish Kumar, Asstt. (HR) of the respondent. He corroborated on oath the contents of the reply submitted by the respondent. He also stated that the petitioner willingly left the job and joined RJ Saints on 26.4.2011 as he was being paid higher salary by the said company.

In the cross-examination, he denied that he has given a phoney statement. When the petitioner left the job, no departmental proceedings were initiated against him.

11. Ex. PW1/B is the copy of the identity card issued by the respondent in the name of the petitioner.

12. Ex. PW1/C is the copy of the demand notice dated 25.5.2011 served upon the respondent by the petitioner.

13. Ex. RW2/A is the copy of Form-B which was filled in by the petitioner for the issuance of the identity card in his name by the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged for doing the tailoring work. The version of the petitioner is that his services were initially engaged by the respondent on 20.3.2010. The respondent has maintained that the petitioner was appointed as a semi-skilled worker on 06.4.2010 and not 20.3.2010.

15. The petitioner has not placed/exhibited on the file any document evidencing that his services were initially engaged by the respondent on 20.3.2010. Rather, the application form Ex. RW2/A makes it crystal clear that the petitioner joined the respondent factory as a semi-skilled labourer on 06.4.2010 only. This date of engagement has also been mentioned on the identity card issued in favour of the petitioner by the respondent, the copy of which is Ex.PW1/B. If the date of joining of the petitioner was wrongly mentioned in the application form Ex. RW2/A or the identity

card then why he did not object to it earlier particularly when the identity card is/was in the possession of the petitioner? The reason to that effect being obscure go to show that the petitioner is not speaking the truth. His services were engaged by the respondent on 06.4.2010 only.

16. The version of the petitioner is that on 27.4.2011, his services were wrongly and illegally terminated by the respondent by an oral order. While denying the said fact the respondent has pleaded that the petitioner absented from his duties from 27.4.2011 onwards since on 26.4.2011 he joined another factory/company viz. M/S RJ Saints on payment of the higher salary. Since the petitioner voluntarily left the services, he cannot say that the provisions of the Act have been infringed by him (respondent).

17. To my mind, the petitioner is telling nothing else except a bundle of lies. The facts narrated by Shri Pritam Chand (RW1) go un-rebutted and unchallenged on the record. It is well known that if a fact is not challenged during the cross-examination, the same is to be taken as admitted by the other side.

18. RW1 categorically stated that the petitioner served RJ Saints from 26.4.2011 to 07.7.2012. The presence of the petitioner was duly marked in the attendance register. The payment from 26.4.2011 to 07.7.2012 was made to the petitioner. In Ex. RW1/A i.e. the register of adult workers pertaining to RJ Saints, the date of joining of the petitioner as a stitcher is recorded as 26.4.2011. Not only this, when the petitioner left RJ Saints, no due certificate Ex. RW1/B was furnished by him. In this certificate which bears the signatures of the petitioner the date of joining of the petitioner in M/S RJ Saints is mentioned as 26.4.2011. The date of leaving the service by the petitioner is detailed as 07.7.2012. In his cross-examination, the petitioner (PW1) also admitted that he joined RJ Saints on 26.4.2011. The petitioner (PW1) admitted that RJ Saints used to pay him the monthly salary of more than Rs.5,000/-, whereas, the respondent was paying him only Rs.3,800/- per mensem.

19. The evidence available on the record makes it abundantly clear that the petitioner joined the other company i.e. RJ Saints on 26.4.2011 as he was offered/paid higher wages than the wages being paid to him by the respondent. Since the petitioner voluntarily joined the other factory/company (RJ Saints) on 26.4.2011, the question of the termination of his services by the respondent on 27.4.2011 in an unlawful manner does not arise.

20. There is satiable evidence on the file to show that the petitioner abandoned the respondent factory of his own accord and free volition to join the service in another factory/company on payment of the higher salary. The claim put forth by the petitioner is totally false and an abuse of the process of the Court.

21. Not only this, on 2nd January, 2013, the below given order was passed by this Court:-

> "02.01.2013 Pr: Petitioner in person Sh. Manish Kumar, Assistant (HR Department) for the respondent.
>
> Sh. Manish Kumar, A.R. for the respondent states that the services of the petitioner have never been terminated by the respondent/Company and the petitioner can re-join his duty today itself. The petitioner/claimant, who is present in the Court, has refused to join the duties at any cost. Thus, now put up on 27-02-2013 at D/Shala. Petitioner to file statement of claim/demand on that date.
>
> Sd/-"

22. The above quoted order too demonstrates that the petitioner is/was not interested to serve the respondent at any cost. It appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false, frivolous and vexatious claim.

23. This issue is decided against the petitioner and in favour of his opponent.

RELIEF (ISSUE NO. 2)

24. Taking into account my findings on issue No.1, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.5,000/- (Rupees Five Thousand only).

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 308/2012

Date of Institution : 09.08.2012

Date of Decision : 01.10.2013

Shri Ramesh Chand s/o Shri Dhani Ram, r/o Village Gwal Tikkar, P.O. Kandgwal Tikkar, Tehsil Palampur, Distt. Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Baijnath, District Kangra, H.P.

..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Sh. Ramesh Chand S/O Sh.-Dhani Ram, Village-Gwal Tikkar, P.O. Kandgwal Tikkar, Tehsil Palampur, Distt. Kangra, H.P. by the Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, from time to time during 1999 to 2007, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 16.05.1999. No appointment letter/order was issued in his name by the respondent/department. From the date of his initial engagement up-to September, 2007, muster rolls for 15 days in a month were issued in his name by the respondent. He was not provided the work and given the artificial break for 15 to 16 days. Sometimes the muster roll for the whole month was issued in his (petitioner's) favour and on the expiry of the said month, his services were terminated by the respondent without any written order. The breaks were given by the respondent from time to time so that he does not complete 240 days of work for the purpose of the regularization of his services as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). At the time of his disengagement after every one month, works and funds were available with the respondent/department. The persons junior to him (petitioner) were retained in service by the respondent and they worked continuously. The names of the juniors are Shri Lakhwinder Singh and Smt. Kanta Devi etc. His (petitioner's) seniority was ignored by the respondent and the muster rolls were not issued in his name continuously by the respondent/department. During the period of his disengagement, he was not gainfully employed. The services of the persons junior to him, who were not given the intentional breaks, have already been regularized by the respondent after completion of eight years of service. He (petitioner) is also entitled to the regularization of his services in the regular pay scale from the date of the regularization of the services of his juniors alongwith the consequential service benefits. A similar case pertaining to the same Division instituted by the workman Shri Suresh Kumar bearing Reference No.23/2010 has already been decided in favour of the labourer by this Court per Award dated 28.11.2011. It was held by this Court that the breaks in service given by the respondent to Shri Suresh Kumar were fictional in nature and the same will have no effect on his seniority and continuity in service. It was also ordered by this Court that the seniority of Shri Suresh Kumar shall be reckoned from the date of his initial appointment. The break period is required to be counted as continuous service. The respondent indulged in unfair labour practice as well as contravened the provisions of Sections 25-F and 25-G of the Act. Demand notice dated 10.6.2010 was served upon the respondent by him (petitioner), but in vain.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"i) The Hon'ble Court may kindly be set aside the illegal break period of applicant from year 1999 to 2007 and directed to respondent to condone the breaks period in continuity of service of applicant.

ii) The Hon'ble Court may kindly be again directed to respondent to pay the back wages of breaks period along with interest @ 12% per annum.

iii) The Hon'ble Court further directed to respondent to consider the case of applicant for regularization as per the seniority of applicant after completion of 8 years or from the date of his junior have been regularized in the regular pay scale Rs.4900-10680/- + grade pay and usual allowances as applicable to similar situated employees of the state government

from time to time and also pay the arrears to the applicant from the date of his regularization to onwards.

iv) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are necessary parties to the petition. They have not been joined as parties/respondents because of which the petition is bad for non-joinder of the necessary parties. The petition is hit by the vice of delay and laches. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the employer employee relationship exists between the parties i.e. the petitioner and the respondent/PWD Department. However, it has been pleaded that the services of the petitioner were initially engaged in the year 1999 i.e. on 15.4.1999 by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. On account of the surplus labour in the National Highway Division, the petitioner was transferred to his (respondent's) office in the month of November, 2004. Since then, the petitioner is working under him (respondent). No artificial/fictional breaks were provided to the petitioner at any point of time. Actually, the petitioner was an intermittent worker. He used to report for duty as per his convenience. As and when he came present, muster rolls for the whole month were issued in his favour. Shri Lakhwinder Singh etc. are senior to the petitioner. Moreover, from the very beginning they are serving under him (respondent). No dispute regarding the intentional breaks, if any, was raised by the petitioner at the relevant time. With the passage of time, the industrial dispute has become stale and faded away. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been violated. He had no intention to deprive the petitioner from working in continuity. As and when he (petitioner) reported for duty his services were duly engaged. The facts of Reference No. 23/2010 are/were different than the instant case. The Award dated 28.11.2011 cannot be used as a precedent. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. He (petitioner) has not been given the breaks in service by the respondent w.e.f. 01.1.2008. He is working continuously from that date. In Reference No. 110/2006 decided on 02.11.2010 titled as Him Shakti PWD Karamchari Sangh v/s Executive Engineer, HPPWD Division (B&R), Joginder Nagar, it has already been held by this Court that the State of Himachal Pradesh or the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the lis.

5. Per order dated 04.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the years 1999 to 2007 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Ramesh Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that initially his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. Subsequently, being surplus, he was transferred in the month of November, 2004 to the HPPWD (B&R) Division, Baijnath. He denied that he used to work as per his sweet will and convenience as well as fictional breaks were not provided to him by the respondent/department. He also denied that he has instituted a phoney petition to harass his opponent.

9. Conversely, Shri J.S. Guleria, Executive Engineer, HPPWD (B&R) Division, Baijnath (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were given to the petitioner from time to time so that he does not complete 240 days of continuous service. He also denied that the workmen junior to the petitioner, whose names figure in the list Ex. RW1/B, completed 240 days of work earlier to him. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex.PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. Vide this letter, all the Chief

Engineers and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the mandays chart pertaining to Shri Harbans Lal and six other daily wagers working under the respondent.

13. Ex. RW1/C is the copy of the reply submitted by the respondent before the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala during the conciliation proceedings which were initiated pursuant to a demand notice served by the petitioner under Section 2A/2K of the Act.

14. It is the admitted case of the parties that the services of the petitioner were initially engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. The petitioner was transferred in the month of November, 2004 from the National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Baijnath being surplus. There is no denial of the fact that the petitioner is still serving the respondent/department.

15. The mandays chart Ex. RW1/A is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged by the respondent/department on 16.5.1999.

16. The version of the petitioner is that from the date of his initial engagement to August, 2007, artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He used to work as per his convenience. As and when the petitioner reported for duty, his services were duly engaged and the muster roll was issued in his name.

17. Section 25-B of the Act postulates as under:-

"25B. Definition of continuous service- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".

18. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

19. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

20. Now comes the all important question as to whether artificial/fictional breaks were provided by the respondent to the petitioner as alleged or not? To my mind, the answer to this query is in the affirmative. The mandays chart Ex. RW1/A clarifies that from the date of his initial engagement to 31.8.2007, work for all the months was not provided to the petitioner by the respondent. The muster roll used to be issued for an entire month in the name of the petitioner and in the next month, no muster roll was issued in his favour by the respondent/department. If the petitioner used to willfully remain absent from duties from time to time (as alleged), then why no show cause notice was issued to him by the respondent and why no disciplinary proceedings were initiated against the petitioner by the respondent/employer? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The mandays chart Ex. RW1/B pertaining to Shri Harbans Lal and others unfolds that the persons junior to the petitioner were provided the work for 240 days or more by the respondent in a block of 12 calendar months. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent

workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. The action of the respondent in not issuing intentionally the muster rolls to the workman for at least 240 days in a calendar year or after the gap of a month/months due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 5

23. Not pressed.

ISSUE NO. 3

24. Taking into account my findings on the issue No.1 above, it is held that the State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the petition. They may be the proper parties.

25. This issue too is decided in favour of the petitioner.

ISSUE NO. 4

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

28. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 309/2012

Date of Institution : 09.08.2012

Date of Decision : 01.10.2013

Shri Chuni Lal s/o Shri Daulat Ram, r/o Village Lahar Ladi, P.O. Kandbari, Tehsil Palampur, Ditt. Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Baijnath, District Kangra, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Chuni lal S/O Sh. Daulat Ram, Village Lahar Ladi, P.O. Kandbari, Tehsil Palampur, Distt. Kangra, H.P. by the Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, from time to time during 1999 to 2007, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 01.04.1999. No appointment letter/order was issued in his name by the respondent/department. From the date of his initial engagement up-to September, 2007, muster rolls for 15 days in a month were issued in his name by the respondent. He was not provided the work and given the artificial break for 15 to 16 days. Sometimes the muster roll for the whole month was issued in his (petitioner's) favour and on the expiry of the said month, his services were terminated by the respondent without any written order. The breaks were given by the respondent from time to time so that he does not complete 240 days of work for the purpose of the regularization of his services as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). At the time of his disengagement after every one month, works and funds were available with the respondent/department. The persons junior to him (petitioner) were retained in service by the respondent and they worked continuously. The names of the juniors are Shri Lakhwinder Singh and Smt. Kanta Devi etc. His (petitioner's) seniority was ignored by the respondent and the muster rolls were not issued in his name continuously by the respondent/department. During the period of his disengagement, he was not gainfully employed. The services of the persons junior to him, who were not given the intentional breaks, have already been regularized by the respondent after completion of eight years of service. He (petitioner) is also entitled to the regularization of his services in the regular pay scale from the date of the regularization of the services of his juniors alongwith the consequential service benefits. A similar case pertaining to the same Division instituted by the workman Shri Suresh Kumar bearing Reference No.23/2010 has already been decided in favour of the labourer by this Court per Award dated 28.11.2011. It was held by this Court that the breaks in service given by the respondent to Shri Suresh Kumar were fictional in nature and the same will have no effect on his seniority and continuity in service. It was also ordered by this Court that the seniority of Shri Suresh Kumar shall be reckoned from the date of his initial appointment. The break period is required to be counted as continuous service. The respondent indulged in unfair labour practice as well as contravened the provisions of Sections 25-F and 25-G of the Act. Demand notice dated 10.6.2010 was served upon the respondent by him (petitioner), but in vain.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "i) The Hon'ble Court may kindly be set aside the illegal break period of applicant from year 1999 to 2007 and directed to respondent to condone the breaks period in continuity of service of applicant.
>
> ii) The Hon'ble Court may kindly be again directed to respondent to pay the back wages of breaks period along with interest @ 12% per annum.
>
> iii) The Hon'ble Court further directed to respondent to consider the case of applicant for regularization as per the seniority of applicant after completion of 8 years or from the date

of his junior have been regularized in the regular pay scale Rs.4900-10680/- + grade pay and usual allowances as applicable to similar situated employees of the state government from time to time and also pay the arrears to the applicant from the date of his regularization to onwards.

iv) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are necessary parties to the petition. They have not been joined as parties/respondents, because of which the petition is bad for non-joinder of the necessary parties. The petition is hit by the vice of delay and laches. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the employer employee relationship exists between the parties i.e. the petitioner and the respondent/PWD Department. However, it has been pleaded that the services of the petitioner were initially engaged in the year 1999 i.e. on 15.4.1999 by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. On account of the surplus labour in the National Highway Division, the petitioner was transferred to his (respondent's) office in the month of November, 2004. Since then, the petitioner is working under him (respondent). No artificial/fictional breaks were provided to the petitioner at any point of time. Actually, the petitioner was an intermittent worker. He used to report for duty as per his convenience. As and when he came present, muster rolls for the whole month were issued in his favour. Shri Lakhwinder Singh etc. are senior to the petitioner. Moreover, from the very beginning they are serving under him (respondent). No dispute regarding the intentional breaks, if any, was raised by the petitioner at the relevant time. With the passage of time, the industrial dispute has become stale and faded away. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been violated. He had no intention to deprive the petitioner from working in continuity. As and when he (petitioner) reported for duty his services were duly engaged. The facts of Reference No. 23/2010 are/were different than the instant case. The Award dated 28.11.2011 cannot be used as a precedent. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. He (petitioner) has not been given the breaks in service by the respondent w.e.f. 01.1.2008. He is working continuously from that date. In Reference No. 110/2006 decided on 02.11.2010 titled as Him Shakti PWD Karamchari Sangh v/s Executive Engineer, HPPWD Division (B&R), Joginder Nagar, it has already been held by this Court that the State of Himachal Pradesh or the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the lis.

5. Per order dated 04.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the years 1999 to 2007 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Chuni Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that initially his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. Subsequently, being surplus, he was transferred in the month of November, 2004 to the HPPWD (B&R) Division, Baijnath. He denied that he used to work as per his sweet will and convenience as well as fictional breaks were not provided to him by the respondent/department. He also denied that he has instituted a phoney petition to harass his opponent.

9. Conversely, Shri J.S. Guleria, Executive Engineer, HPPWD (B&R) Division, Baijnath (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were given to the petitioner from time to time so that he does not complete 240 days of continuous service. He also denied that the workmen junior to the petitioner, whose names figure in the list Ex. RW1/B, completed 240 days of work earlier to him. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex.PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. Vide this letter, all the Chief

Engineers and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the mandays chart pertaining to Shri Harbans Lal and six other daily wagers working under the respondent.

13. Ex. RW1/C is the copy of the reply submitted by the respondent before the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala during the conciliation proceedings which were initiated pursuant to a demand notice served by the petitioner under Section 2A/2K of the Act.

14. It is the admitted case of the parties that the services of the petitioner were initially engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. The petitioner was transferred in the month of November, 2004 from the National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Baijnath being surplus. There is no denial of the fact that the petitioner is still serving the respondent/department.

15. The mandays chart Ex. RW1/A is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged by the respondent/department on 16.4.1999.

16. The version of the petitioner is that from the date of his initial engagement to August, 2007, artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He used to work as per his convenience. As and when the petitioner reported for duty, his services were duly engaged and the muster roll was issued in his name.

17. Section 25-B of the Act postulates as under:-

"25B. Definition of continuous service- For the purposes of this Chapter,-

(3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(v) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(vi) he has been on leave with full wages, earned in the previous years;

(vii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(viii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".

18. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In Digwadih Colliery v. Workmen, AIR 1966 SC 75, it has been held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

19. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

20. Now comes the all important question as to whether artificial/fictional breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the affirmative. The mandays chart Ex. RW1/A clarifies that from the date of his initial engagement to 31.8.2007, work for all the months was not provided to the petitioner by the respondent. The muster roll used to be issued for an entire month in the name of the petitioner and in the next month, no muster roll was issued in his favour by the respondent/department. If the petitioner used to willfully remain absent from duties from time to time (as alleged), then why no show cause notice was issued to him by the respondent and why no disciplinary proceedings were initiated against the petitioner by the respondent/employer? The

reasons to that effect being obscure go to show that the respondent is not speaking the truth. The mandays chart Ex. RW1/B pertaining to Shri Harbans Lal and others unfolds that the persons junior to the petitioner were provided the work for 240 days or more by the respondent in a block of 12 calendar months. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. The action of the respondent in not issuing intentionally the muster rolls to the workman for at least 240 days in a calendar year or after the gap of a month/months due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 5

23. Not pressed.

ISSUE NO. 3

24. Taking into account my findings on the issue No.1 above, it is held that the State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the petition. They may be the proper parties.

25. This issue too is decided in favour of the petitioner.

ISSUE NO. 4

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

28. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 266/2012

Date of Institution : 29.06.2012

Date of Decision : 01.10.2013

Shri Raj Kumar s/o Shri Prabhu Ram, r/o Village Barad, P.O. Sunhani, Tehsil Ghumarwin, District Bilaspur, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Ghumarwin, District Bilaspur, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether the termination of the services of Shri Raj Kumar S/O Shri Prabhu Ram, R/O Village Barad, P.O. Sunhani, Tehsil Ghumarwin, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. w.e.f. October, 1998 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of June, 1997. He worked as such up-to the month of October, 1998 and he discharged his duties with sincerity. No complaint was received against him by the respondent/department. During the period of his employment, the respondent used to give him intermittent breaks. In October, 1998, his services were terminated by the respondent by an oral order. He completed 240 days of work in a block of 12 calendar months prior to the date/month of his termination. Before the disengagement of his services, no notice was served upon him by the respondent/department. At the time of the termination of his services, the persons junior to him namely Shri Raghunath, Smt. Niki Devi, Shri Joginder Singh and Shri Mast Ram were retained in service by the respondent. The latters are still working with the respondent/department. His seniority was ignored. The fact that the juniors are still working under the respondent makes it clear that sufficient funds and work are available with the respondent. Original Application No. 605/1999 was instituted by him before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal against the termination order. Such Original Application was disposed of by the Hon'ble Administrative Tribunal on 01.10.2004 with the remarks that it has no jurisdiction to decide the matter. He (petitioner) was given the liberty to approach the appropriate Forum for the redressal of his grievances. Thereafter, a demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour Officer, but in vain. No opportunity to re-join the services was afforded to him by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order passed by the respondent in the month of October, 1998 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner. The claim petition/reference is bad for non-joinder of the necessary parties viz. Deputy Commissioner, Bilaspur, who is/was the Incharge of the DRDA (District Rural Development Agency). The petitioner has misrepresented himself. He has concealed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of June, 1997. However, it has been pleaded that in the year 1997 under

the 8th Five Year Plan, a centrally sponsored scheme known as Employment Assurance Scheme (EAS in short) was implemented in Ghumarwin development block of Bilaspur District. As per the scope of the scheme, it was to operate in the rural areas of 1752 blocks and 257 districts situated in drought prone area, desert area, tribal area and hill area of the country. Under the EAS assured employment of 100 days was to be provided during the lean agriculture season to the rural poor who were in need of the employment and seeking the same. The implementing authority of the scheme i.e. Deputy Commissioner, Bilaspur as per Chapter 3 of the scheme released the funds per letter dated 17.3.1997 in his (respondent's) favour. He (respondent) was one of the implementing agencies under the EAS. With the release of the funds by the implementing authority to him (respondent), he provided assured employment to as many as 572 rural masses of Ghumarwin development block in a phased manner being the implementing agency. The services of those persons were engaged under the EAS who sought employment assistance under the scheme. The petitioner was also employed in the scheme. His name figures at serial No.476 of the list of the workmen whose services were engaged under the EAS. On account of non availability of the budget, the services of the workmen (including the petitioner) who were employed under EAS, could not be continued beyond October, 1998. Since the engagement of the petitioner was under a specific scheme, the discontinuation of his services for want of sanction/funds by the implementing authority or closure of the scheme does not amount to unfair labour practice. It stands admitted that the petitioner had preferred Original Application No. 605/1999 before the Hon'ble Administrative Tribunal which was decided on 01.10.2004. Of late, the Government of India has again introduced a similar rural employment guarantee scheme under the name and style of MNREGA for rural/poor masses of the whole country. No intentional breaks in service were provided to the petitioner at any point of time. He did not complete 240 days of continuous service as claimed. The instant industrial dispute has been raised by the petitioner at a belated stage. Smt. Niki Devi, Shri Joginder Singh and Shri Mast Ram are senior to the petitioner. Shri Raghu Nath was also employed under the EAS. The services of some of the workmen have been re-engaged as per the orders passed by the Hon'ble Administrative Tribunal. The petitioner cannot claim parity with the workmen who completed 240 days of work as per Section 25-B of the Act. He (petitioner) is also debarred from claiming parity with the labourers whose services were engaged by him (respondent) for normal functioning, operation and routine development activities carried out under the plan and non plan expenditure of the State of Himachal Pradesh. No provision of the Act has been flouted. The services of the petitioner could not be continued for want of the release of funds under the EAS by the implementing authority (Deputy Commissioner). The petitioner is gainfully employed as an agriculturist. He is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that his services have been disengaged by the respondent with a malafide intention to accommodate the favorites. It stands admitted that his (petitioner's) services were engaged under the EAS. Shri Raghunath too was employed initially under the EAS. His services have already been regularized by the respondent/department. Shri Raghunath was not given any break in service and allowed to complete 240 days of work in a calendar year. He (Shri Raghunath) was appointed by the respondent in the month of July, 1997 and is junior to him (petitioner). The services of the other workmen junior to him (petitioner) have also been regularized by the respondent. The latter adopted the pick and choose method in engaging and disengaging the daily waged beldars.

5. Per order dated 25.02.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent during the month of October, 1998 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action? ..*OPP.*

3. Whether the claim petition is not maintainable in the present form? ..*OPR.*

4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Raj Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that the muster rolls for the laying/construction of the road were issued in his favour. His services were disengaged on the pretext that the budget is not available. 87 persons junior to him are still working with the respondent. He denied that the instant industrial dispute was raised by him in the year 2011. He also denied that he has instituted a phoney petition to gain the employment and other benefits unlawfully.

9. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Ghumarwin (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were terminated in the month of October, 1998. Volunteered, the scheme had come to an end and the funds were not

available because of which the services of the petitioner stood disengaged automatically. He admitted that the persons junior to the petitioner are working under him. Self stated, the juniors have been re-engaged as per the orders passed by this Court and the Hon'ble Administrative Tribunal. When the persons junior to the petitioner were appointed, a notice of re-employment was not served upon the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner.

10. Ex. PW1/B is the seniority list of daily waged workers engaged under the Employment Generation Scheme. It corresponds to Ex. RW1/D. The list(s) indicate that in all 572 persons were appointed by the respondent under the EAS. The name of the petitioner figures at serial No.476 of the seniority lists.

11. Ex. RW1/B is the copy of the outlines and objectives of EAS.

12. Ex. RW1/C is the copy of an office order dated 17th March, 1997 issued by the Deputy Commissioner, Bilaspur. It depicts that the funds under the EAS were released so that assured employment of 100 days is provided to the rural poor.

13. Exts. RW1/E to I are the mandays charts relating to Shri Raj Kumar (petitioner) Shri Joginder Singh, Shri Mast Ram, Smt. Niki Devi and Shri Raghu Nath respectively.

14. Ex. RW1/J is the copy of an Award dated 17.1.2006 rendered by one of my ld. Predecessors in Reference No.27/2004 (RBT No.209/2004) titled as Shri Joginder Singh versus State of H.P. through Secretary PWD, Shimla and another. It reveals that the claim petition of the workman Shri Joginder Singh was dismissed by this Court. There is no denial of the fact that the Award dated 17.1.2006 pronounced by this Court was set aside by the Hon'ble High Court of Himachal Pradesh in CWP No.1296/2006, decided on December 20, 2007.

15. Ex. RW1/K is the copy of the order/judgment passed on 29.5.1998 by the Hon'ble Administrative Tribunal in O.A. No.2119/1997 titled as Shri Mast Ram versus State of Himachal Pradesh through Secretary (P.W.D.), to the Govt. of Himachal Pradesh, Shimla and others.

16. Ex. RW1/L is the copy of the order dated October 27, 2000 pronounced by the Hon'ble Administrative Tribunal in O.A. No.2844/2000 titled as Smt. Niki Devi versus State of H.P. through Secretary, H.P. Public Works Department, Shimla and another.

17. Ex. RW1/M is the copy of the order dated 03.11.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 2162/1999 titled as Sh. Raghu Nath Sharma versus The State of Himachal Pradesh, through Secretary (PWD) and another.

18. Ex. RW1/N is similar to Ex. RW1/M.

19. Ex. RW1/O is the copy of the order/judgment dated April 18, 2001 passed by the Hon'ble Administrative Tribunal in O.A. No.3007/1999 titled as Shri Joginder Singh versus State of Himachal Pradesh through Secretary (PWD) and another.

20. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks in service to the petitioner by the respondent from time to time. The said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

21. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent in the month of June, 1997 and he worked as such up-to the month of October, 1998. In the reply, the respondent has no where pleaded that the workman/petitioner was put to notice that his employment is/was in a project (EAS) and the period of engagement is/was coterminous with the project. The respondent (RW1) also did not utter a single word to the effect that at the time of the appointment of the petitioner, he was duly informed that his services have been engaged in a project/scheme and the same will come to an end on the closure of the project/scheme. It is the admitted case of the respondent that the services of the petitioner were disengaged in the month of October, 1998 because the funds under the EAS were not released by the implementing authority viz. Deputy Commissioner, Bilaspur.

22. Ex. RW1/E i.e. the mandays chart pertaining to the petitioner unfolds that he did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

22A. From the seniority list Ex. PW1/B (corresponding to Ex. RW1/D), it can be gathered that at the time of the disengagement of the services of the petitioner, the persons junior to him were retained in service by the respondent. Some of the juniors even worked in the year 1999. This shows that the respondent failed to adhere to the principle of 'last come first go'. Not only this, the respondent has placed on the file the seniority list of daily waged/regular workers whose services were engaged under EAS and have been re-engaged as per the orders of the Court. The said list clarifies that the services of the persons junior to the petitioner namely Shri Akhilesh Kumar etc. have already been reengaged by the respondent. RW1 admitted that the persons junior to the petitioner are serving under him. When the services of the persons junior to the petitioner were re-engaged, an opportunity of re-employment was not afforded to the petitioner. This clearly shows that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. For the said reasons, the termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

23. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

24. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

25. This issue is also decided in favour of the petitioner and against the respondent.

ISSUES NO. 3, 5 AND 6

26. Not pressed.

ISSUE NO. 4

27. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by

the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

28. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Moreover, in his crossexamination, the petitioner (PW1) admitted that he makes both the ends meet by doing the work of agriculture. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. Due to these reasons, he is not entitled to the back wages.

29. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 7)

30. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. October, 1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 265/2012

Date of Institution : 29.06.2012

Date of Decision 01.10.2013

Shri Prem Lal s/o Shri Chaudhary Ram, r/o Village Jaroda, P.O. Dadhol, Tehsil Ghumarwin, District Bilaspur, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Ghumarwin, District Bilaspur, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether the termination of the services of Shri Prem Lal S/O Shri Chaudhary Ram, R/O Village Jaroda, P.O. Dadhol, Tehsil Ghumarwin, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. w.e.f. October, 1998 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 16.6.1997. He continuously worked as such with the respondent/department up-to the month of October, 1998. During the last days of October, 1998, his services were disengaged by the respondent without assigning any reason and issuing any notice which amounts to unfair labour practice. In the seniority list of daily wagers prepared by the respondent, the names of 572 workmen have been recorded. His name figures at serial No.479 of the said list. As per the seniority list, 93 persons junior to him are still working with the respondent/department. Besides them, five other junior persons namely Sh. Nikka Ram and Sh. Pyare Lal etc. are serving the respondent. The latter failed to adhere to the principle of 'last come first go'. Not only this, after his disengagement new/fresh hands were engaged by the respondent. He was not given an opportunity of re-employment. Permanent work is available with the respondent/department. He (petitioner) preferred Original Application No.633/1999 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal against the retrenchment order. Such Original Application was dismissed by the Hon'ble Administrative Tribunal on 01.10.2004 with the remarks that it has no jurisdiction to deal with the same. Thereafter, he (petitioner) served a demand notice upon the respondent. Conciliation proceedings were initiated by the District Employment Officer-cum-Conciliation Officer, Bilaspur, but in vain. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order passed by the respondent in the month of October, 1998 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner. The claim petition/reference is bad for non-joinder of the necessary parties viz. Deputy Commissioner, Bilaspur, who is/was the Incharge of the DRDA (District Rural Development Agency). The petitioner has misrepresented himself. He has concealed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of June, 1997. However, it has been pleaded that in the year 1997 under the 8th Five Year Plan, a centrally sponsored scheme known as Employment Assurance Scheme ('EAS' in short) was implemented in Ghumarwin development block of Bilaspur District. As per the scope of the scheme, it was to operate in the rural areas of 1752 blocks and 257 districts situated in drought prone area, desert area, tribal area and hill area of the country. Under the EAS, assured employment of 100 days was to be provided during the lean agriculture season to the rural poor who were in need of the employment and seeking the same. The implementing authority of the scheme i.e. Deputy Commissioner, Bilaspur, as per Chapter 3 of the scheme, released the funds per letter dated 17.3.1997 in his (respondent's) favour. He (respondent) was one of the implementing agencies under the EAS. With the release of the funds by the implementing authority to him (respondent), he provided assured employment to as many as 572 rural masses of Ghumarwin development block in a phased manner being the implementing agency. The services of those persons were engaged under the EAS who sought employment assistance under the scheme. The petitioner was also employed under the scheme. His name figures at serial No.479 of the list of the workmen whose services were engaged under the EAS. On account of non availability of the budget, the services of the workmen (including the petitioner) who were employed under EAS, could not be continued beyond October, 1998. Since the engagement of the petitioner was under a specific scheme, the discontinuation of his services for want of sanction/funds by the implementing authority or closure of the scheme does not amount to unfair labour practice. Of late, the Government of India has again introduced a similar rural employment guarantee scheme under the name and style of MNREGA for rural/poor masses of the whole country. No intentional breaks in service were provided to the petitioner at any point of time. He did not complete 240 days of continuous service as claimed. The instant industrial dispute has been raised by the petitioner at a belated stage. The services of some of the workmen have been re-engaged as per the orders passed by the Hon'ble Administrative Tribunal. The petitioner cannot claim parity with the workmen who completed 240 days of work as per Section 25-B of the Act. He (petitioner) is also debarred from claiming parity with the labourers whose services were engaged by him (respondent) for normal functioning, operation and routine development activities carried out under the plan and non plan expenditure of the State of Himachal Pradesh. No provision of the Act has been flouted. The services of the petitioner could not be continued for want of the release of funds under the EAS by the implementing authority (Deputy Commissioner). The petitioner is gainfully employed as an agriculturist and cook in a private school. He is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were engaged for the laying/construction and repair of the road(s). He was not employed in any scheme.

5. Per order dated 25.02.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent during the month of October, 1998 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action? ..*OPP.*

3. Whether the claim petition is not maintainable in the present form? ..*OPR.*

4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Prem Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he and 571 other labourers were engaged under a scheme. He admitted that he worked up-to the month of October, 1998. Self stated, his services were disengaged by the respondent on the pretext that the budget is not available. He denied that he has instituted a phoney petition to gain the employment and other undue benefits.

9. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Ghumarwin (respondent) testified as RW1. In his affidavit Ex. RW1/A files in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the persons junior to the petitioner are working under him. Volunteered, their services have been reengaged as per the orders of the Court. When the petitioner was employed, no appointment letter was issued in his name to the effect that his services have been engaged in a scheme. When the persons junior to the petitioner were engaged, an opportunity of re-employment was not afforded to the petitioner. He denied that the services of the petitioner were disengaged in an unlawful manner.

10. Ex. PW1/B is the seniority list of daily waged workers engaged under the Employment Generation Scheme. It corresponds to Ex. RW1/D. The list(s) indicate that in all 572 persons were appointed by the respondent under the EAS. The name of the petitioner figures at serial No.479 of the seniority lists.

11. Ex. RW1/B is the copy of the outlines and objectives of EAS.

12. Ex. RW1/C is the copy of an office order dated 17th March, 1997 issued by the Deputy Commissioner, Bilaspur. It depicts that the funds under the EAS were released so that assured employment of 100 days is provided to the rural poor.

13. Exts. RW1/E to J are the mandays charts relating to Shri Prem Lal (petitioner), Shri Nikka Ram, Shri Lekh Ram, Shri Anil Kumar, Shri Pyare Lal and Shri Chaman Lal respectively.

14. Ex. RW1/K is the copy of the order/judgment passed on 05.1.1999 by the Hon'ble Administrative Tribunal in O.A. No.1919/1998 titled as Shri Nikka Ram versus State of Himachal Pradesh through Secretary (Public Works Department), to the Govt. of Himachal Pradesh, Shimla and another.

15. Ex. RW1/L is the copy of the order dated April 22, 1999 pronounced by the Hon'ble Administrative Tribunal in O.A. No.718/1999 titled as Lekh Ram versus State of Himachal Pradesh through Secretary, (PWD) to the Govt. of Himachal Pradesh, Shimla and another.

16. Ex. RW1/M is the copy of the order dated 06.9.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 721/1999 titled as Sh. Anil Kumar versus The State of Himachal Pradesh, through Secretary (Public Works Department) and another.

17. Ex. RW1/N is the copy of the order dated 23.4.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 607/1999 titled as Sh. Pyare Lal versus The State of Himachal Pradesh, through Secretary (PWD) and another.

18. Ex. RW1/O is the copy of the order/judgment dated April 22, 1999 passed by the Hon'ble Administrative Tribunal in O.A. No.722/1999 titled as Shri Chaman Lal versus State of Himachal Pradesh through Secretary (PWD) and another.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent w.e.f. 16.6.1997 and he worked as such up-to the month of October, 1998. In the reply, the respondent has no where pleaded that the workman/petitioner was put to notice that his employment is/was in a project (EAS) and the period of engagement is/was coterminous with the project. The respondent (RW1) also did not utter a single word to the effect that at the time of the appointment of the petitioner, he was duly informed that his services have been engaged in a project/scheme and the same will come to an end on the closure of the project/scheme. It is the admitted case of the respondent that the services of the petitioner were disengaged in the month of October, 1998 because the funds under the EAS were not released by the implementing authority viz. Deputy Commissioner, Bilaspur.

20. Ex. RW1/E i.e. the mandays chart pertaining to the petitioner unfolds that he did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. From the seniority list Ex. PW1/B (corresponding to Ex. RW1/D), it can be gathered that at the time of the disengagement of the services of the petitioner, the persons junior to him were retained in service by the respondent. Some of the juniors even worked in the year 1999. This shows that the respondent failed to adhere to the principle of 'last come first go'. Not only this, the respondent has placed on the file the seniority list of daily waged/regular workers whose services were engaged under EAS and have been re-engaged as per the orders of the Court. The said list clarifies that the services of the persons junior to the petitioner namely Shri Akhilesh Kumar etc. have already been reengaged by the respondent. RW1 admitted that the persons junior to the petitioner are serving under him. When the services of the persons junior to the petitioner were re-engaged, an opportunity of re-employment was not afforded to the petitioner. This clearly shows that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. For the said reasons, the termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

23. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUES NO. 3, 5 AND 6

25. Not pressed.

ISSUE NO. 4

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the

observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. While testifying in the Court as PW1, the petitioner has given his age as 56 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Moreover, in his crossexamination, the petitioner (PW1) admitted that he makes both the ends meet by doing the work of agriculture. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. Due to these reasons, he is not entitled to the back wages.

28. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 7)

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. October, 1998, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 367/2012

Date of Institution : 29.11.2012

Date of Decision : 01.10.2013

Shri Rakesh Kumar s/o Shri Duni Chand, r/o Village Uttpur, Post Office Uttpur, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Joginder Nagar, Tehsil Joginder Nagar, District Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Rakesh Kumar S/O Sh. Duni Chand, Village Uttpur, Post Office Uttpur, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during February 1998 to 31-08-2007 by The Executive Engineer, HPPWD Division Joginder Nagar, Distt. Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.1.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.1.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in

favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:-

"1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. 09/1/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Sharma Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during February, 1998 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Rakesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of January, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very

beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was

out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 346/2012

Date of Institution : 17.9.2012

Date of Decision : 01.10.2013

Shri Gandhi Ram s/o Shri Duni Chand, r/o Village and P.O. Utpur, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.
..*espondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of services/giving breaks in services of Shri Gandhi Ram S/O Shri Duni Chand, R/O Village and P.O. Utpur, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during October, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.1.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.1.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:-

"1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. Feb 1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Sharma Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court

of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during October, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Gandhi Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created

in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of February, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The

muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to

31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 342/2012

Date of Institution : 17.9.2012

Date of Decision : 01.10.2013

Shri Madan Lal s/o Shri Kali Dass, r/o Village Drahal, P.O. Golwan, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether termination of services/giving breaks in services of Shri Madan Lal S/O Shri Kali Dass, R/O Village Drahal, P.O. Golwan, Tehsil Joginder Nagar, District Mandi, H.P. from

time to time during May, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.5.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.5.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. His services were engaged pursuant to the verbal requests made by him (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:-

"1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. June 1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This

division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.

2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.

3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service of Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Pardeep Kumar S/O Sh. Roshan Lal, Sh. Kishori Lal S/o Sh. Raghubir, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram, Sh. Nihal Chand S/o Sh. Devi Ram, Sh. Anil Kumar S/o Sh. Mangat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.

4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.

5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged without following proper procedure and as per the decision of Hon'ble High court of H.P. in CWP No.2270/2008 filed by Sharmila Devi Sharma Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed without following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.

7. That the contents of this para are denied.

8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period he has not worked in this department.

9. Para being of judicial nature. Hence no comments.

10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 24.4.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during May, 1999 to 31.08.2007 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Madan Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of June, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. t is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 33 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 333/2012

Date of Institution : 03.9.2012

Date of Decision : 01.10.2013

Smt. Kanta Devi w/o Shri Nag Raj, r/o Village Chakka Makriri, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of services/giving breaks in services of Smt. Kanta Devi W/O Shri Nag Raj, R/O Village Chakka Makriri, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during November, 1998 to 31.08.2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 01.11.1998 by the HPPWD in the National

Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 01.11.1998 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of June, 2001. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the

whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Smt. Kanta Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.6.2001.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement

made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement i.e. 01/6/2001 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 47 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 316/2012

Date of Institution : 28.12.2012

Date of Decision : 01.10.2013

Smt. Mangli Devi w/o Shri Mangat Ram, r/o Village Pabbo, P.O. Jhamehar, Tehsil Joginder Nagar, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of services/giving breaks in services of Smt. Mangli Devi W/O Shri Mangat Ram, R/O Village Pabbo, P.O. Jhamehar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during June, 1998 to 31.08.2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 01.6.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 01.6.1998 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with

other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Smt. Mangli Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after

the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1998 and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 25.1.1998.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 47 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 35/2013

Date of Institution : 05.4.2013

Date of Decision : 03.10.2013

Shri Praveen Kumar s/o Shri Sita Ram, r/o Village & P.O. Katouharh Kalan, Tehsil Amb, Distt. Una, H.P. ..*Petitioner.*

Versus

The Managing Director, M/s International Cars & Motors Ltd. VPO Amb, Distt. Una, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Manohar Thakur, Adv.

For the Respondent : Sh. Raghav Sood, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Praveen Kumar S/O Sh. Sita Ram, Village & P.O. Katouharh Kalan, Tehsil Amb, Distt. Una, H.P. by The Managing Director, M/s International Cars & Motors Ltd. VPO Amb, Distt. Una, H.P. w.e.f. 17.11.2011 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management".

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a helper by the respondent on 1st February, 2006. After completing about

one year of service, he (petitioner) was assigned the duty to ply fork lifter machine. The respondent manufactures the automobiles/motor vehicles. He (petitioner) discharged his duties sincerely and faithfully to the satisfaction of the respondent/employer. One Sh. Vijay Kumar, who was working as a supervisor in the company of the respondent, was not having cordial relations with him (petitioner). Shri Vijay Kumar used to unnecessarily interfere in his working and abuse him. The supervisor Shri Vijay Kumar also used to threaten that in case his orders are not complied with, he can get him (petitioner) shunted out of the company/factory. Shri Vijay Kumar being a strong person used to bully him without any rhyme and reason. On 17th November, 2011, the above mentioned supervisor started calling him (petitioner) the names without any reason. He (petitioner) asked Shri Vijay Kumar to behave properly. On this, Shri Vijay Kumar remarked that either he (petitioner) should toe his line or face the consequences. When he (petitioner) requested the supervisor Shri Vijay Kumar not to hurl the abuses, the supervisor got furious and proclaimed that now he will ensure that he (petitioner) is ousted from the factory. Thereafter, the supervisor went to the factory manager. He (petitioner) was called by the factory manager. The latter without hearing him (petitioner) terminated his services with immediate effect. He was drawing Rs.4,350/- per month as salary at the time of the termination. Employees' Provident Fund was being deducted from his wages. He (petitioner) is a poor man. He has been made to suffer without any fault. He is willing to serve the respondent/company even now. His services have been disengaged unnecessarily and unlawfully. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order dated 17.11.2011 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay him the compensation for the wrongful retrenchment of his services.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition as framed is not maintainable. The same is time barred. The petition has not been verified as per law. The same deserves rejection on this score alone. The petitioner has deliberately concealed and withheld the true/material facts from the Court because of which he is not entitled to any relief. He (petitioner) is estopped from filing the claim petition by his act and conduct.

On merits, paras 1 to 8 of the reply read thus:-

"That para no.1 of the petition regarding the engagement of petitioner as helper through registered Contractor Naib Singh S/o Bhag Singh under Contractor Labour (Regulation & Abolition Act, 1970) with registration No. LO/UNA/CLA/169/2010 is not disputed. The rest of the contents of this para are absolutely wrong and incorrect. It is vehemently denied that the petitioner was directly engaged by respondents on 1st February, 2006 as alleged in this para. It is vehemently denied that after completing about one year of service, the petitioner was assigned with the duty to ply fork lift machine as alleged in this para. The actual fact of matter is that the service of petitioner was availed as contract labour through contractor Naib Singh S/o Bhag Singh strictly in accordance with contract labour (regulation and abolition Act, 1970). The petitioner joined as helper under the contract labour on 1st March 2007 as helper for loading and unloading of the stock in the factory at Amb. The photo copy of nomination form 2 is attached herewith.

2. That para no.2 of the petition is wrong and incorrect. The working of the petitioner was average.

3. That para no.3 of petition is absolutely wrong and denied on its all details. However employment of Vijay Kumar as Supervisor of the company is not disputed, the respondents were unaware of the relationship of petitioner with Vijay Kumar. It is vehemently denied that Vijay Kumar supervisor unnecessarily interfere and abuse the petitioner without any justified reason as alleged in this para. It is denied in vehemence that the petitioner was threatened by Vijay Kumar that he can get petitioner shunted from the factory/company as alleged in this para, it is vehemently denied that supervisor is a strong person and used to bully the petitioner for no reasons as alleged in this para, all the allegations leveled in this para are the figment of imagination of petitioner and the same are the beyond the realm of reality, no such alleged incident ever happened with the petitioner, the petitioner during his period of work never communicated or complained about such incident of the factory manager or any other superior officials of the factory even the contractor of petitioner Sh Naib Singh was never made aware of any alleged incident, the petitioner is a opulent person belong to rich family of the area and in order to torment the peaceful work of atmosphere of the factory and other co-workers has setup a false story in this para, all the allegations leveled in this para are frivolous, baseless, scandalous.

4. That para no.4 of the petition is absolutely wrong and incorrect in all the details. It is vehemently denied that on 17-11-2011 the supervisor started abusing the petitioner without any valid reason as alleged in this para. It is vehemently denied that supervisor got furious and further abused the petitioner and raised threats that the petitioner will be ousted from the factory as alleged in this para, the story narrated by the petitioner is based on falsehood and the same is unfounded and bundle of lies. The real fact of matter is that production of the company started decreasing due to exponential failure of the vehicle (Rhino) and the sale of the company lowered from 916 unit to 613 unit from the year 2009-10 and 2010-11, further there is down fall in the production of the company in the year 2011-12 and only 506 unit were in production, due to such shortfall in the production, the company is unable to sustain the monetary funds required for its normal functioning. The respondents in order to protect and preserve the rights of its workmen as well as contract labourers had offered the employees to work at their another unit situated at Hoshiarpur (Pb) with the prescribed minimum wages of Punjab Govt. and other extra benefits on the same post, the number of employees has opted this golden opportunity and are diligently providing their services and labour at Hoshiarpur unit (International Tractors Ltd.). The petitioner was also offered the same option and post in the month of Oct. 2011 but the petitioner flatly refused to accept the such offer of the respondents, the petitioner without any intimation has stopped coming to work from 19-10-2011 as per his own whims and reasons and the respondents were left with no option but to lift his name from attendance of contract labour 02-12-2011, the respondents due to on going substantial loss of production could not sustain the capita of employees in its unit at Amb. It is significant to mention here that the petitioner came to the factory on 07-11-2011 and asked the officials of respondents to pay him wages from the month of Oct. 2011, on the request of petitioner the officials of respondents had paid the wages to the petitioner for the month of Oct. 2011, the wages slip of the petitioner for the month of Oct., 2011 bearing his signature alongwith the extract of wages register is attached herewith and photo copy of attendance record is also attached herewith. However the respondents fairly admits the unpaid bonus of petitioner amounting to Rs.1838/- for the financial year 2011-12 is due towards the respondents and the respondents always expressed their willingness to ay the same, however the petitioner did not come to collect the bonus alongwith amount of Rs.1320/- under the head unpaid leave with wages. Apart from this respondents has no liability towards the petitioner, the petitioner was offered a job at the other plant situated at Hoshiarpur (Pb) owing to the reason that the plant at Amb has suffered unsustainable losses and could not survive with the present services of employees, the other plant of respondents is not situated far the native place of petitioner, there are large number of employees who opted the offer of transfer and are even presently working in the factory at Hoshiarpur (Pb).

5. That para no.5 of the petition is wrong and incorrect. It is vehemently denied that the factory manager without hearing the petitioner has terminated the services of petitioner as alleged in this para. The detail reply has been given in para supra, hence no repetition.

6. That para no.6 of petition is wrong and incorrect in its detail. It is vehemently denied that termination of the service of petitioner is wholly illegal, unconstitutional, unreasonable, unjustified and against the provisions of law as alleged in this para. The petitioner has deliberately left his service since 19-10-2011 due to his willful absentation from his work, the petitioner cannot be reinstated in the factory of respondents as the factory of respondents is on the brink of closer.

7. That para no.7 of the petition is absolutely wrong and incorrect. It is vehemently denied that the petitioner was getting salary of Rs.4350/- at the time of his termination as alleged in this para. The petitioner was getting the wages of Rs.3600/- per month. (Photo copy payment register is attached. It is vehemently denied that the petitioner is entitled to service, salary/back wages seniority benefits and is further entitle for compensation for wrongful termination as alleged in this para.

8. That para no.8 of the petition is absolutely wrong and incorrect in all its detail. The petitioner has set up a false story in this para". In these circumstances, the respondent prays that the petition in hand being false, frivolous, baseless and meritless be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 16.7.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 17-11-2011 is illegal and unjustified? ..*OPP.*

2. Whether the claim petition is not maintainable in the present form? ..*OPR.*

3. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

4. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..*OPR.*

5. Whether the claim petition is time barred as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : Not pressed

Issue No. 5 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Praveen Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had initially joined the service through Shri Naib Singh, Contractor. He admitted that the factory/unit being run by the respondent at Amb (District Una) suffered losses because of which the respondent asked him (PW1) to serve in his other unit at Hoshiarpur. He admitted that several other workers, who were working at Amb started serving in the Hoshiarpur in the unit/factory of the respondent. No complaint was ever lodged by him (PW1) against Shri Vijay Kumar (Supervisor). He denied that his services were never disengaged by the respondent. He also denied that to gain the employment in an unlawful manner and other undue benefits, he has instituted a phoney petition.

9A. Conversely, Shri Suraj Bhan, Factory Manager of the respondent testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the services of the petitioner were disengaged wrongfully.

10. Ex. R1 is the copy of the nomination and declaration form filled in by the petitioner/workman under the Employees Provident Funds and Employees Pension Scheme.

11. Ex. R2 is the copy of the wages slip for the month of October, 2011 relating to the petitioner.

12. Ex. RW1/B is the copy of notice of Change of Manager given by the respondent.

13. Exts. RW1/C and D are the copies of Forms 5 and 10 under the Employees' Provident Funds Scheme, 1952 furnished by the respondent relating to the workers (including the petitioner).

14. Ex. RW1/E is the copy of the reply dated March 26, 2012, furnished by the respondent before the Labour Inspector, Amb, District Una, H.P. during the conciliation proceedings.

15. Exts. RW1/F, G and H are the copies of the payment of wages register for the months of October, 2011 to December, 2011.

16. Exts. RW1/I and J are the mandays charts pertaining to the petitioner who was employed through the contractor Shri Naib Singh.

17. Exts. RW1/K to M are the copies of the attendance register for the months of October to December, 2011.

18. Exts. RW1/N and O are the copies of the wages register for the months of August and September, 2011.

19. Ex. RW1/P is the wages slip for the month of September, 2011 with regard to the petitioner.

20. Ex. RW1/Q is the copy of the register of leave with wages with respect to the petitioner.

21. Ex. RW1/R is the copy of the national festival holidays casual and sick leave register maintained by the contractor Shri Naib Singh. It depicts the holidays/leaves granted to the petitioner.

22. It is an admitted fact that the petitioner served the respondent/factory. The respondent has denied that the services of the petitioner were directly engaged by him on 1st February, 2006. On 16.7.2013, during the conciliation proceedings before this Court, the respondent had offered that the petitioner can join even tomorrow in its sister concern at Hoshiarpur (Pb) since the unit at Amb is on the verge of closure due to heavy losses and majority of the workmen working in the unit at Amb have already been transferred to the sister concern at Hoshiarpur. The petitioner/claimant who was present in the Court is/was not ready and willing to serve at Hoshiarpur at any cost. The order dated 16.7.2013 passed by this Court coupled with the documents available on the file make it abundantly clear that the relationship of master and servant exists between the parties.

23. The version of the petitioner is that on 17.11.2011, his services were terminated by the respondent wrongly and illegally. While denying the said fact the respondent has pleaded that on 19.10.2011, the petitioner left the job of his own accord and free volition.

24. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that after the petitioner allegedly left the service, a notice was served upon him by the respondent asking him to resume his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

25. Now comes the all important question as to whether the services of the petitioner were disengaged by the respondent in contravention of the provisions of the Act or not?

26. It is not the case of the petitioner that at the time of the retrenchment of his services, any person junior to him was retained in service by the respondent. It is also not his (petitioner's) case that after the disengagement of his services, new/fresh hands were appointed by the respondent and he was not given an opportunity of re-employment. The provisions of Sections 25-G and 25-H of the Act are thus not attracted in this case.

27. It is the basic law that to derive the benefit under Section 25-B read with Section 25-F of the Act, a duty is cast upon the workman/employee to prove that he had continuously served for a period of 240 days in a block of 12 calendar months preceding the date of the termination. In the statement of claim, the petitioner has no where pleaded that he had worked for 240 days or more in a block of 12 calendar months anterior to the date of his termination i.e. 17.11.2011. Not only this, while testifying in the Court as PW1, the petitioner did not whisper a single word to the

effect that he had worked for 240 or more days under the respondent. For these reasons, it cannot be said that the respondent has flouted the provisions of Section 25-F of the Act.

28. Since the alleged disengagement of the services of the petitioner by the respondent does not fall within the mischief of Sections 25-F, 25-G and 25-H of the Act, by no stretch of imagination it can be said that the respondent has wrongly and illegally dispensed with the services of the petitioner. The claim petition is not maintainable. The petitioner is not entitled to any relief.

29. These issues are decided against the petitioner and in favour of his adversary.

ISSUES NO. 3 AND 4

30. Not pressed.

ISSUE NO. 5

31. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31A. This issue is decided in favour of the petitioner.

RELIEF (ISSUE NO. 6)

32. As a sequel to my findings on the issues No. 1 to 2, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

33. The reference is answered in the aforesaid terms.

34. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

35. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 127/2011

Date of Institution : 26.11.2011

Date of Decision : 03.10.2013

Shri Balbir Singh s/o Shri Nirmal Singh, r/o Village Nangran, Tehsil and District Una, H.P.
..Petitioner.

Versus

The Conservator-cum-Project Director, Swan River (I.W.M.) Project, Una District Una, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether the verbal termination of services of Shri Balbir Singh S/O Nirmal Singh, R/O Village Nangran, Tehsil and District Una, H.P. by the Conservator-cum-Project Director, Swan River (I.W.M.) Project, Una District Una, H.P. w.e.f. 08-06-2010 without notice, charge sheet, holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, past service benefits and relief the above named worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a driver by the respondent w.e.f. 10.5.2007 after the medical fitness test. He continuously worked as such up-to 31.5.2010 as well as completed more than 240 days of work in each and every calendar year of his employment. During the entire service period, no complaint regarding his work and conduct was received by his superiors. Rather, his services were appreciated. From 1st June, 2010 to 7th June, 2010, he could not attend the duties due to the weakness (low blood pressure). He informed the respondent/office telephonically regarding his inability to attend the duty due to the ill health. He took the treatment from Saini Clinic, Naya Nangal, District Ropar. With effect from 08.6.2010, he was declared fit to perform his duties. On the same day i.e. 08.6.2010 he reported for duty. He was not allowed to join his duties by the concerned officer on the pretext that in his place a new driver has been appointed. He (petitioner) was directed to come to the office after a couple of days. He again approached the respondent/office for the resumption of his duties. The latter flatly refused him (petitioner) from joining the duty. Thereafter, a demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour Inspector at Una, but in vain. The work of River Swan is still going on and there is no reduction in the staff strength. Before the disengagement of his

services on 08.6.2010, no show cause notice was served upon him by the respondent. Neither he was charge-sheeted for the absence from duty nor an inquiry was conducted against him. His service conditions are regulated by the Model Standing Orders Act, 1946. At the time of the termination of his services, neither one month pay in lieu of the notice period nor the retrenchment compensation were paid to him. He was drawing Rs.7,000/- per month on the date of the termination of his services. When his services were disengaged, the person junior to him namely Sh. Subhash Kumar (Kala) was retained in service by the respondent. From the date of his termination, he (petitioner) is unemployed. He tried his level best to secure the employment, but without any success. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the verbal termination order dated 08.6.2010 passed by the respondent be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 13 of the reply read thus:-

"1. That the contents of Para 1 of claim petition are admitted to the extent that the petitioners was engaged as a driver by the respondent office w.e.f. 11th may 2007. Rest of the contents of this para are wrong and hence denied. It is however submitted that the respondent office is a Project i.e. Swan River Integrated Watershed Management Project Una, constituted for Integrated Watershed Management of Swan River with the assistance of Japan International Cooperation Agency (JICA) and State Govt. of HP. The tentative period of the completion of this Project is 8 to 9 years w.e.f. 2006. The Aims & objectives of this Project as well as reference no 3203-16 of proceedings of 1st SLSC Meeting vide which it was initiated by the respondent office is being attached here with as annexure R1 & R2. Since the Project is not of a permanent nature accordingly it was decided by the State Level Steering Committee (SLSC) of Swan River Integrated Watershed Management Project meeting dated 15-12-2008 (copy of the minutes attached). It was decided that is addition to regular staff of different line departments of the state govt., who are sent on secondment basis to the Project the additional requirement of the staff if any not available from the line departments, is to be met by engaging contractual staff including retried officials. Thus in accordance to the above decisions of SLSC the appointment of the drivers was made on contract basis. In pursuance of his contractual appointment for a consolidated sum of rupees 3150 per month for the initial period of 82 days, the petitioner had executed an agreement on 11.5.2007, which was further extended from time to time till 30.6.2010, for which the petitioner has executed separate agreements at the relevant time which are being Annexed as annexures are R3 to R14.

2. That the content of para 2 of the claim petition are also wrong and hence denied. As a matter of fact the applicant is habitual of consuming liquor. Many times while on duty, he was found under influence of alcohol. But, taking a lenient view he was let off after verbal warnings. An incidence is brought to the kind notice of the Hon'ble Tribunal, that on 12-09-09 applicant was deputed to drive the senior officers of the Project to FSI Dehradun, to undergo training. He stayed at Dehradoon with the officers till the completion of training. The training ended on 17.7.2009 and the officers were about to proceed on back journey in the evening But, the applicant was found

under the influence of liquor and he was not in the condition to drive the vehicle. In view of the safety of the officers as well as Govt. Vehicle, the other driver from Project was asked to reach Kala Amb by bus and a local driver was hired to drive the Vehicle from Dehradun to Kala Amb. In this regard the matter was reported by the concerned officers to the respondent and the respondent keeping sympathetic view had warned the petitioner to improve his conduct is future, copy of note sheet dated 19.7.2009 is being attached annexure as R15.

3. That the content of Para 3 of the claim petition are also wrong and hence denied. On 03.6.2010 it was reported by the Pool Officer Sh. Perm Chand Sharma that the applicant is absent from duty w.e.f. 30.5.2010 & when he was contracted through telephone and by sending of special messengers Sh. Raj Kumar Driver and Sh. Bal Krishan Fgd, he was found in drunken state & refused to attend the duties. On the report of Pool Officer received through Deputy Director.(Admn.), It was decided that the conduct of the petitioner is not satisfactory and is acting contrary to the terms & conditions of his agreement of service. It was further decided that since he was indulging into such activity time and again his contract may not be renewed. Copy of note sheet is attached as annexure R16. However despite above decision the applicant did not report for duty till the expiry of his contract dated 01-04-2010 on 30.6.2010. It is further submitted that the applicant had received his last payment for the month of 5/2010 w.e.f. 1.5.2010 to 29.5.2010 without any protest. The copy of the voucher of payment is attached an annexure R17. Thus with the expiry of the agreement dated 01-04-2010 up to of 30.6.2010 the services of the applicant could not be continued by the respondent office. It is wrong to allege that during the term of his last agreement the applicant had never reported back along with a medical certificate, on the contrary the alleged medical certificate issued by a private medical practioner came to the notice of the respondent when the applicant has raised present industrial dispute vide demand notice dated 30.10.2010. However the said medical certificates is also in violation of the Para no-5 of the contract of the service of the applicant. 4. That the content of Para 4 of the claim petition are also wrong and hence denied. The applicant has never reported for duty as is being alleged by him in this para. The above fact is also evident from the receipt of last payment which the applicant had received in the month of June, 2010 without any protest on his part. It is further submitted that with the abandonment of the job by the applicant, the respondent office was in need of a driver to ply the vehicle on which the applicant was deployed. Accordingly Sh. Subhash Chand s/o Bishan dass was engaged on contract basis w.e.f. 1-7-2010, however the above Subhash Chand had also left his services with the respondent office w.e.f. 31-3-2011. The detailed seniority list of the drivers engaged on the contract basis is being attached as annexure R18. The initiation of conciliation proceedings by the applicant under the I.D. Act 1947 are not disputed being a matter of record.

5. That in reply to Para 5 of the petition it is submitted that the Swan River (IWM) Project is not of permanent nature and its term is likely to expire on march 31, 2015.

6. That the contents of the Para 6 of the Claim petition are also wrong and hence denied a detailed reply has already being given in paras above. It is however submitted that the applicant has left the job w.e.f. 30.5.2010 without any intimation to the respondent office and despite the oral notice massage through Spl. messenger i.e. Sh. Raj Kumar Driver and Sh. Bal Krishan Fgd and availability of the post till the expiry the agreement up to 30.6.2010, the applicant had failed to assume his duty. As such now no work is available with the respondent office for the applicant. further the expiry of the agreement the applicant being a contractual employee was also not entitled for any show cause notice.

7. That the content of Paras 7&8 of claim petition being of legal nature, require no reply. However applicant being a contractual employee is not entitled for any protection under the Industrial Disputes Act.

8. That in reply to para 9 of the petition the detailed man days as derived from the payment vouchers is placed as annexure R19. It is however submitted that the criteria of

continuation of service defined under sec. 25/B of the Industrial Dispute Act is not attracted in the case of the applicant being a contractual employee.

9. That the contents of Para 10 of the claim petition are also wrong and hence denied, a detailed reply has already been given in above paras. Applicant being a contractual employee was not entitled for notice as has been alleged by him in this para.

10. That the content of para 11 of claim petition are not disputed. However the applicant was initially engaged on contract basis with a consolidated sum of Rs.3150/- per month.

11. That the content of para 12 of claim petition are also wrong and hence denied. The replying respondent has not violated any of the provisions of Industrial Disputes Act.

12. That in reply of Para 13 of claim petition is submitted that Sh. Subhash Kumar s/o Bishan Dass was engaged after the expiry of the contract/agreement of the engagement of the applicant. Thus the applicant is precluded from claiming passivity with the above driver. However in this respect reply has already been given in Para 4 above.

13. That the content of Para 14 of claim petition are wrong and hence denied. The applicant after his abandonment of services with the respondent office as well as expiry of his last contract agreement is gainfully employed privately as well is also carrying on his livelihood from the agriculture".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services have been terminated against the principles of natural justice. It has been held by the various Hon'ble Courts that repeated contractual appointment amounts to unfair labour practice. A false story has been invented by the respondent to snatch his job. If he used to remain in an inebriated condition, then why he was not subjected to the medical examination? Neither any show cause notice was served upon him nor he was charge-sheeted. Even no warning was issued to him. None visited his residence. The respondent/management is making lame excuse(s).

5. Per order dated 07.8.2012, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 08.06.2010 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Balbir Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he was serving in a project funded by the Government of Japan. He also admitted that some of the officers and officials from different departments are serving in the project on deputation basis. He (PW1) and few other staff members were appointed in the project on contract basis. The contract/agreement dated 11.5.2007 (Ex. R1) bears his signatures. He admitted that he was being paid the fixed salary every month and the term of his contractual appointment was extended from time to time. The period of the contractual appointment was to come to an end on 30.6.2010. The agreements/contracts Exts. R2 to R12 have been signed by him. His consolidated wages were increased from time to time. He admitted that he signed all the agreements/contracts of appointment voluntarily after admitting their contents to be correct. He also admitted that as per condition No.5 of the agreement(s) he was supposed to submit the medical certificate issued by the civil surgeon/authorized medical officer. He denied that his work and conduct was not satisfactory as well as he is a drunkard. He denied the story put forth by the respondent pertaining to the visit to Dehradun. Of course, he admitted that from Dehradun, he returned to Una in a bus. He denied that the officials, who accompanied him to Dehradun, made a complaint against him to the Project Director, where- after, an internal inquiry was conducted and he was asked to improve his behaviour. He admitted that Shri Prem Chand Sharma was the Incharge of the vehicles and had reported on 03.6.2010 to the high ups that he (petitioner) is absent from duties w.e.f. 30.5.2010. He denied that S/Sh. Bal Krishan (forest guard) and Raj Kumar (driver) had come to his house to ask him to join the duties. He also denied that S/Sh. Bal Krishan and Raj Kumar found him in a drunken condition and he refused to join the duty in their presence. Further, he denied that keeping in mind his work and conduct, the Project Director decided not to renew his contract after 30.6.2010. He admitted that the medical certificate was forwarded by him alongwith letter/demand notice dated 30.10.2010 (Ex. PW1/B) to the respondent. He denied that he remained absent from duty w.e.f. 30/5/2010 to 30/6/2010. He even denied that during the said period, he did not move any application for the grant of leave or reported for duty. He admitted that the salary of 29 days for the month May, 2010, was received by him vide voucher Ex. R13 without any protest. Further, he admitted that the term of the contractual appointment came to an end on 30.6.2010 and Shri Ganesh was appointed as a driver by the respondent on 04.4.2011. He admitted that the services of Shri Subhash Chand (driver) were engaged by the respondent on 01.7.2010. He is not aware of the fact that Shri Subhash Chand left the service on 31.3.2011. He denied that no person junior to him is serving the respondent and he is not entitled to the re-employment etc.

10. Conversely, Shri Prem Chand, Superintendent-cum-Pool Officer in the office of the respondent, testified as RW1. He stated that the charge of the vehicles was handed over to him in the year 2008. He has brought the requisitioned record. Noting dated 03.6.2010, the copy of which is Ex. RW1/A, was made by him. Shri Raj Kumar Dogra (Dy. Director) was having vehicle

No.HP20B-8904 of the project. Shri Balbir Singh (petitioner) was the driver of the said vehicle. Shri Raj Kumar, Dy. Director, reported that the driver is absent. He (RW1) deputed Shri Bal Krishan (forest guard) and Shri Raj Kumar (driver) to the house of the petitioner to ask him to join the duties. Previously, he (RW1) telephoned the petitioner requesting him to report for duty. S/Sh. Bal Krishan and Raj Kumar returned and informed him (RW1) that the petitioner met them. He was under the influence of liquor and refused to come to the office. After that, the note-sheet was put up by him (RW1) before Shri R.K. Dogra, Dy. Director (Administration). The Project Director Shri H.S. Dogra took a decision not to renew the period of contractual appointment of the petitioner taking into account his act and conduct. The term of the contractual appointment of the petitioner was to come to an end on 30.6.2010. Wages for the month of May, 2010 were paid to the petitioner on 08.6.2010 vide voucher Ex. R13. When the payment was made to the petitioner, it was intimated to him that the Project Director has decided not to renew the period of his contractual appointment.

In the cross-examination, he deposed that on 10.6.2010 the petitioner had moved an application, the copy of which is Ex. RA in the office. He denied that the medical certificate was appended to the said application and the services of the petitioner have been disengaged in a wrongful manner.

11. Forest Guard, Shri Bal Krishan appeared as RW2. He lent credence to the version of the respondent.

In the cross-examination, he denied that he never went to the house of the petitioner and the latter was ill.

12. RW3 is Shri R.K. Dogra, Joint Director in the office of the respondent. While placing on record Ex. RW3/A i.e. the authority letter issued in his name by the respondent-Project Director, he corroborated on oath the contents of the reply submitted by the respondent. Ex. RW3/B is the affidavit filed by him (RW3) in terms of Order 18 Rule 4 CPC.

In the cross-examination, he deposed that the petitioner was not charge-sheeted for his absence from duties or consuming alcohol during the duty period. Even no disciplinary proceedings were initiated against the petitioner. He denied that the services of the petitioner have been disengaged in an unlawful manner.

13. Ex. PW1/B is the copy of the demand notice dated 30th October, 2010 served upon the respondent by the petitioner under Section 2-A of the Act. The demand notice was sent by the petitioner under registered cover to the respondent. Ex. PW1/C is the copy of the postal receipt.

14. Ex. PW1/D is the copy of an application dated 06.10.2010 submitted by the petitioner before the respondent for the grant of permission to join the duty.

15. Ex. PW1/E is the copy of the acknowledgement evidencing that the application Ex. PW1/D was received in the office of the respondent.

16. Ex. PW1/F is the copy of the reply which was preferred by the respondent before the Labour Inspector-cum-Conciliation Officer, Una during the conciliation proceedings which were initiated pursuant to the demand notice sent by the petitioner.

17. Ex. PW1/G is the copy of an appreciation letter dated 20.7.2007 issued by the Superintendent of Police, District Una (HP). It reveals that the services rendered by the petitioner during the bye-election to Hamirpur Lok Sabha were appreciated.

18. Ex. RW3/C is the copy of the policy document relating to Swan River Integrated Watershed Management Project.

19. Ex. RW3/D is the copy of the record of the proceedings of the first meeting of State Level Steering Committee of the project held on 27th November, 2006.

20. Ex. RW3/E is the copy of the Loose Notesheet dated 19.7.2009 pertaining to the office of the respondent. It clarifies that the petitioner had taken various officers of the project to attend the training at Dehradun from 13th to 17th July, 2009. The petitioner, who was the driver of vehicle No.HP 20B 8904, was under the influence of liquor when the officers were supposed to start back journey to Una after the training as per the schedule. The Project Director/respondent had given an opportunity to the petitioner to improve.

21. Ex. RW3/F is the seniority list of the drivers working in Swan River Project.

22. Ex. RW3/G is the mandays chart relating to the petitioner.

23. Ex. RW3/H is the copy of the noting dated 10.6.2010 made on the application (Ex. RA) of the petitioner. Such noting/observations were made by Shri R.K. Dogra (RW3). The petitioner used to drive the vehicle of the project provided to RW3. The noting is reproduced below verbatim for ready reference:-

> "He is habitual absconder. Drinks, shouts and remains in oblivion. Not fit for driving in such conditions".

24. It is the admitted case of the parties that the services of the petitioner were engaged as a driver on contract basis in the project i.e. Swan River Integrated Watershed Management Project. The petitioner worked in the project on payment of the consolidated salary per mensem to him from 10/11 May, 2007 to 30/31 May, 2010. The term of contractual appointment of the petitioner was extended from time to time by the respondent. Exts. R1 to R12 are the copies of the agreements/contracts for employment, which were executed between the parties. The last agreement/contract was executed on 1st April, 2010. Its copy is Ex. R12. As per this agreement, the services of the petitioner were engaged on contract basis up-to 30.6.2010 on payment of the fixed salary of Rs.7,000/- per month to him.

25. The version of the respondent is that the work and conduct of the petitioner was not up-to the mark during the service period. He used to remain drunk and absented from his duties w.e.f. 30.5.2010. Two officials of the project namely Shri Bal Krishan (forest guard-RW2) and Shri Raj Kumar (driver) were sent to the house of the petitioner on 03.6.2010 to ask him to join his duties, but in vain. The petitioner who was under the influence of liquor met the above named officials and refused to join his duty. While denying the said facts the petitioner has pleaded that from 01.6.2010 to 07.6.2010, he was unwell because of which he could not report for duty. After recuperating, he went to the office on 08.6.2010. However, he was not allowed to perform the duties by his superiors. He (petitioner) neither absented from duties nor abandoned the job.

26. As already mentioned, the services of the petitioner were engaged by the respondent in a project on contract basis from time to time. The term of contractual appointment of the petitioner was to come to an end on 30.6.2010. The agreements/contracts for employment Exts. R1 to R12 were executed between the parties. The petitioner (PW1) admitted that he signed the agreements voluntarily and after admitting their contents to be correct. Some of the terms and conditions relating to the appointment of the petitioner as detailed in Exts. R1 to R12 are as follows:

a) The contract of employment of the 1st party (petitioner) shall ipso-facto stands terminated on last working day. No formal notice/order by the 2nd party (respondent) conveying the termination shall be necessary.

b) 1st party will not absent himself except in case of accident or sickness certified by the civil surgeon/authorized medical officer without obtaining permission from the 2nd party or officer authorized in this behalf.

c) 1st party will not be entitled to any emoluments for the period of absence.

d) The services of the 1st party shall automatically come to an end in case no further extension is granted.

e) The services of the 1st party shall stand terminated by the Project Director or its officer without any previous notice if the 1st party is found to be prima facie guilty of insubordination, intemperance, moral turpitude or other misconduct or of any breach or non performance of his/her duties.

f) The 1st party will not have any claim for continuation of service after the expiry of the contract period.

27. It is the admitted case of the petitioner that he did not attend to his duties from 01.6.2010 to 07.6.2010. In the application dated 10.6.2010, the copy of which is Ex. RA, the petitioner admitted that he remained absent from duty without permission and will not commit such a mistake again. The petitioner (PW1) has maintained that he took the treatment from Saini Clinic, Naya Nangal, District Ropar. He was declared fit to resume his duties on 08.6.2010 by the doctor. The medical fitness certificate, if any, issued by Saini Clinic is not there on the record. There is nothing on the file to show that the doctor(s) of Saini Clinic are/were the authorized medical officer(s). Not only this, the medical certificate was not submitted in the office by the petitioner alongwith the application dated 10.6.2010 (Ex.RA). Instead, the petitioner (PW1) in his cross-examination admitted that the medical certificate was forwarded by him to the respondent alongwith the letter/demand notice dated 30.10.2010, the copy of which is Ex. PW1/B. If the petitioner was really suffering from some ailment and the medical fitness certificate was issued in his name by Saini Clinic, New Nangal, District Ropar on 07/08 June, 2010, then why he did not submitted the same in the office alongwith the application dated 10.6.2010 (Ex. RA)? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. No explanation is forthcoming on his behalf as to why he did not submit the medical fitness certificate issued by the civil surgeon/authorized medical officer in the office of the respondent for almost four months. The story narrated by the petitioner regarding the illness seems to be totally false and baseless. It is not the case of the petitioner that his Controlling Officer Shr. R.K. Dogra (RW3), the Pool Officer Shri Prem Chand (RW1) and Shri Bal Krishan (RW2) etc. are/were inimical to him. The statements made by these witnesses and the office notings made by them cannot be brushed aside or ignored in a casual manner.

28. True it is that no show cause notice was issued to the petitioner by the respondent at any point of time. Admittedly, the petitioner was never chargesheeted by the respondent for the misconduct. Even no disciplinary proceedings were initiated against the petitioner by the respondent. The same will not come to the rescue of the petitioner in view of various office notings, depositions made by RWs 1 to 3 as well as the terms and conditions of the appointment relating to the petitioner as contained in the agreements/contracts for appointment, the copies of which are Exts. R1 to R12.

29. Even if for argument sake, it is held that the services of the petitioner were wrongly and illegally terminated by the respondent w.e.f. 08.6.2010 during the currency of the contract period, which was to come to an end on 30.6.2010, the question arises as to whether after 30.6.2010, the petitioner has a right to continue in service and the respondent can be directed to

reinstate his services? To my mind, the answer to this query is in the negative. The term of contractual appointment could be extended only by the 2nd party (respondent) on the expiry of the contract period. Exts. R1 to R12 clearly stipulate that the services of the 1st party (petitioner) shall stand ipso-facto terminated on the last working day i.e. the day on which the term of contractual appointment comes to an end. At the most, the petitioner is entitled to the wages up-to 30.6.2010. His reinstatement in service cannot be ordered. Section 2(oo) of the Act reads thus:-

> "[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (g) voluntary retirement of the workman; or
>
> (h) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (i) termination of the service of a workman on the ground of continued ill-health;]"

30. Taking into account clause (bb) of the above quoted Section, the disengagement of the services of the petitioner by the respondent does not come within the mischief of the word "retrenchment" as defined in the Act.

31. The respondent/employer found the petitioner unfit for the renewal of his contract period after 30.6.2010 despite the fact that the petitioner was given an opportunity to improve himself. He (petitioner) is not entitled to the reemployment.

32. To be fair to the ld. Authorized Representative for the claimant/petitioner, now I proceed to discuss the rulings cited by him.

i) Madhu versus Presiding Officer, Labour Court, Amritsar and another, 2012 (4) RSJ 61 (P&H). In this case, the services of a workman were abruptly terminated 7 days short of completing 240 days on the ground of misconduct without issuing the charge-sheet. The case relates to a regular employees and not the contractual employee.

ii) Municipal Council, Quadian versus Presiding Officer, Labour Court, Gurdaspur and another, 2007 (2) RSJ, 318 (P&H). In this case the services of a workman were retrenched as the letter of appointment did not stipulate the period of contractual appointment. The same is not the situation in the instant case.

iii) Senior Medical Officer, Incharge, Primary Health Centre, Dudhan Sadhan, Patiala, 2007 (2) RSJ 602 (P&H). Here the contractual appointment of a workman was not extended by virtue of the instructions issued by the Punjab Government. This too, is not the situation in the case in hand.

33. The trite laid down in the above quoted authorities in no way benefits the petitioner.

34. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been rightly terminated by the respondent. The claim petition is not maintainable. It

appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and frivolous claim. He is not entitled to any relief.

35. These issues are decided against the petitioner and in favour of the respondent.

ISSUE NO. 3

36. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

37. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

38. As a sequel to my findings on the issues No. 1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

39. The reference is answered in the aforesaid terms.

40. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

41. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 312/2012

Date of Institution : 28.8.2012

Date of Decision : 14.10.2013

Shri Rajiv Kumar s/o Shri Fagnu Ram, r/o Village and P.O. Kangu, Tehsil Sunder Nagar, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.S.E.B. Transmission Division, Bilaspur, District Bilaspur, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Pradeep Dogra, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether the termination of the services of Shri Rajiv Kumar S/O Shri Fagnu Ram, R/O Village and P.O. Kangu, Tehsil Sunder Nagar, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. w.e.f. 26-03-1998 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?"

2. After the receipt of the reference a corrigendum was received from the appropriate Govt. which reads thus:-

> "The Executive Engineer, H.P.P.W.D. Division Ghumarwin, Distt. Bilaspur" be read as "The Executive Engineer, H.P.S.E.B. Transmission Division Bilaspur, Distt. Bilaspur".

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 7th April, 1997. He continuously worked as such up-to 25.3.1998. On the next day i.e. 26.3.1998, his services were terminated by the respondent by a verbal order without assigning any reason. Before the disengagement of his services, no notice was served upon him by the respondent/Board. At the time of his termination, the persons junior to him namely S/Sh. Naresh Kumar, Bhagat Ram, Ghanshyam and Dev Raj etc. were retained in service by the respondent. They are still serving the respondent/Board. Their services have already been regularized by the respondent. His (petitioner's) seniority has been ignored and disturbed by the respondent who failed to abide by the principle of 'last come first go'. He (petitioner) preferred Original Application No.468 of 1998 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal for the redressal of his grievances. Such Original Application was disposed of by the Hon'ble Administrative Tribunal on April 10, 2008 with the remarks that it has no jurisdiction to entertain the matter. A demand notice dated 03.10.2006 was served upon the respondent by him (petitioner). Conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Bilaspur but in vain. From the date of his disengagement, he is unemployed. The respondent indulged in unfair labour practice. His action is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as well as para 14 sub para 2 of the Himachal Pradesh State Electricity Board

Industrial Establishment Standing Orders adopted by the Board. As such, he (petitioner) prays that the termination order dated 26.3.1998 be upset. The respondent be directed to reinstate him in service with all consequential benefits including seniority, continuity in service and payment of the back wages etc.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The same is wholly misconceived and groundless. The petition is baseless and flagrant abuse of the process of law. It has been instituted to blackmail him (respondent) and get undue advantages. The claimant/petitioner has no cause of action and locus standi to sue. He is estopped from filing the claim petition by his act and conduct. The petitioner has not approached the Court with clean hands. He has concealed the true and material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar and he worked from 07.4.1997 to 25.3.1998 with certain breaks. The petitioner did not complete 240 days of work in any calendar year of his employment. It has not been specifically denied that the persons junior to the petitioner namely S/Sh. Naresh Kumar and Bhagat Ram etc. are serving under him (respondent) and their services have already been regularized. Sh. Naresh Kumar and others have been re-engaged as per the directions issued by the Hon'ble Administrative Tribunal. It stands admitted that the petitioner had preferred an Original Application before the Hon'ble Administrative Tribunal against the termination order and the demand notice dated 03/10/2006 was served by him. The services of the petitioner were never terminated as alleged. Actually, the petitioner left the job of his own sweet will. Therefore, neither any notice was required to be served upon him nor the compensation was payable. He (respondent) did not indulge in any unfair labour practice. No provisions of the Act or the Standing Orders has been flouted. The petitioner be put to strict proof to show that he is not gainfully employed. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with special costs.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the relationship of master and servant still exists between the parties. He never left the service voluntarily. In-fact, the respondent stopped issuing the muster rolls in his name from 26.3.1998 onwards and informed him (petitioner) that his services will be re-engaged as and when the funds/budget is available. Despite the availability of the work and the funds, an opportunity of re-employment was not afforded to him. New/fresh hands were appointed by the respondent.

6. Per order dated 10.12.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 26.3.1998 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action? ..*OPP.*

3. Whether the petitioner has the locus-standi to sue? ..*OPP.*

4. Whether the petition is not maintainable in the present form? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*

6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

7. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Yes

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Issue No. 6 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. Shri Rajiv Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that S/Sh. Rakesh Kumar and Shyam Lal etc. had joined the service alongwith him. Self stated, they joined the service after the engagement of his services. He does not know that Shri Rakesh Kumar etc. had challenged the termination order before the Hon'ble Administrative Tribunal and the Hon'ble Tribunal directed the respondent to reinstate them in service. He denied that he willingly left the job and has instituted a phoney petition. He also denied that he did not complete 240 days of work.

10. Conversely, Shri B.R. Bhardwaj, Sr. Executive Engineer, Electrical System Division HPSEB, Bilaspur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner worked under him from 07.4.1997 to 25.3.1998. No complaint was received against the petitioner during his service tenure. He denied that the services of the petitioner were disengaged by them on 26.3.1998. Volunteered, the petitioner left the job willingly. When the petitioner abandoned the job, no notice was served upon him calling upon him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He (RW1) feigned ignorance about the fact that S/Sh. Rakesh Kumar etc. are junior to the petitioner and are still serving under him. No new/fresh hands have been engaged after 26.3.1998. Self stated, some of the labourers have been re-employed as per the orders of the Court. Nowadays, the petitioner is working as a driver in Himachal Road Transport Corporation, Sunder Nagar. He denied that the services of the petitioner were terminated in an unlawful manner.

11. Ex. PW1/B is the copy of a letter dated 11.12.2009 written by the Assistant Engineer, Construction Sub Division-I, HPSEB Kangoo (Sundernagar) to the respondent. It details the period for which Shri Rakesh Kumar and Shri Shyam Lal etc. worked as daily waged beldars under the respondent.

12. Ex. PW1/C is the mandays chart relating to Shri Ghanshyam.

13. Ex. PW1/D is the mandays chart pertaining to Shri Rajiv Kumar (petitioner). It corresponds to Ex. RW1/B.

14. Exts. RW1/C to H are the copies of various orders/judgments passed by the Hon'ble Administrative Tribunal in different Original Applications titled as Shri Ghanshyam versus Himachal Pradesh State Electricity Board etc. and others.

15. Ex. RW1/I is the copy of the order dated April 10, 2008 rendered by the Hon'ble Administrative Tribunal in O.A. (M) No.468 of 1998 titled as Shri Rajiv Kumar versus State of H.P. through Secretary, HPSEB and others. It reveals that the Original Application instituted by the petitioner/applicant was rejected by the Hon'ble Administrative Tribunal on the ground that it has no jurisdiction to entertain the matter.

16. Ex. R1 is the combined seniority list of daily waged beldars etc. as it stood on 30.11.1999 relating to the office of the respondent.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar on 07.4.1997 and he worked as such up-to 25.3.1998. The version of the petitioner is that on 26.3.1998, his services were wrongly and illegally dispensed with by the respondent by an oral order. While denying the said fact, the respondent has pleaded that the petitioner left the service of his own accord and free volition.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

19. The mandays chart Ex. PW1/D (corresponding to Ex. RW1/B) clarifies that the petitioner did not completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 26.3.1998 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

20. The respondent has placed on the record combined seniority list of daily waged beldars etc. as it stood on 30.11.1999. The same is Ex. R1. Provisional seniority list of daily waged beldars as on 01.1.2001 has also been produced by the respondent. The perusal of both the seniority lists unfolds that the persons junior to the petitioner namely S/Sh. Ghanshyam and Uma Chand etc. are still serving the respondent/Board. This indicates that the respondent failed to adhere to the principle of 'last come first go'. Not only this, after the disengagement of the services of the petitioner, the persons junior to him were re-employed by the respondent. Of course, the respondent has taken the plea that the juniors have been re-engaged as per orders of the Court. There is nothing on the file to prove that at the time of re-engaging the services of the persons junior to the petitioner, an opportunity of re-employment was afforded to him by the respondent. That being so

it can be safely said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

21. While testifying in the Court as PW1, the petitioner has given his age as 33 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Moreover, Shri B.R. Bhardwaj (RW1) in his cross-examination deposed that presently, the petitioner is serving as a driver in HRTC, Sunder Nagar Depot. This fact has not been disputed by the claimant/petitioner. He (petitioner) has failed to discharge the initial onus that during the period of his forced idleness he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 3

23. Taking into account, my findings on issue No.1, it is held that the petitioner has a cause of action. He has the locus standi to sue.

24. These issues are also decided in favour of the petitioner and against his opponent.

ISSUES NO. 4 TO 6

25. Not pressed.

RELIEF (ISSUE NO. 7)

26. As a sequel to my findings on the issues No. 1 to 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.3.1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh and adopted by the Board from time to time. It is clarified that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 294/2012

Date of Institution : 21.07.2012

Date of Decision : 15.10.2013

Shri Dila Ram s/o Shri Bhadru Ram, r/o Village Rakheda, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether retrenchment of services of Shri Dila Ram S/O Shri Bhadru Ram, R/O Village Rakheda, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 01-06-2006 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1998. Muster Roll No.127 w.e.f. 1st August, 1998 was issued in his name by the respondent/department. He continuously worked as such up-to 31.5.2006 under the Assistant Engineer, HPPWD Sub Division Dharampur. Suddenly, on 01.6.2006 his services were terminated by a verbal order by the Assistant Engineer, Dharampur as per the directions of the respondent. Before the disengagement of his services, no show cause notice was issued to him. Neither he was charge-sheeted nor an inquiry was conducted against him for the misconduct, if any. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. He (petitioner) had completed more than 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months prior to the date of his termination. At the time of his disengagement, the persons junior to him namely Sh. Chaman Lal and Shri Mehar Singh etc. were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. One Smt. Mamta Devi w/o Shri Hans Raj was appointed as a daily waged beldar on muster roll basis by the respondent with effect from 06.4.2004. Her services were retrenched by the respondent/department

w.e.f. 08.7.2005. In the month of September 2008, the services of Smt. Mamta Devi were re-engaged by the respondent. He (petitioner) was not given an opportunity of re-employment despite the fact that he is/was senior to Smt. Mamta Devi. Not only this, the services of the workmen who were retrenched on 08.7.2005 have been re-engaged by the respondent/department from the year 2009 onwards. Being a senior workman, he was not afforded the opportunity of re-employment. He approached the respondent and the Assistant Engineer, Sub Division Dharampur time and again for the reinstatement of his services, but in vain. Demand notice dated 18.8.2009 served upon the respondent by him did not have the desired effect. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

> "i) That the Hon'ble Court kindly be set aside the illegal termination order dated 01.06.2006 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
>
> ii) The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
>
> iii) The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs 5000/- as litigation cost as well as counsel fee and any other relief if the Hon'ble Court deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The claimant/petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.8.1998 and he continuously worked as such up-to 31.5.2006. The fact that the petitioner had completed more than 240 days of work in each and every calendar year of his employment has not been disputed. However, it has been pleaded that the services of the petitioner were never disengaged as alleged. Actually, on 01.6.2006, the petitioner left the job voluntarily and thereafter, never reported for duty. No person junior to the petitioner was retained in service at the time of his alleged termination. It stands admitted that the services of Smt. Mamta Devi w/o late Shri Hans Raj were terminated on 07.7.2005. Smt. Mamta Devi was reappointed on compassionate grounds as her husband died in an accident. Since the petitioner left the job willingly, the question of affording an opportunity of re-employment to him does not arise. The petitioner is not entitled to any protection under the Act. No provision of the Act has been infringed. The fact that the petitioner is not gainfully employed after the date of his alleged termination has been denied for want of knowledge. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 20.9.2012, following issues were framed:-

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 01.6.2006 wrongly and illegally as alleged? ..*OPP.*

2. Whether the reference is not maintainable in the present form? ..*OPR.*

3. Whether the petition suffers from the vice of delay and laches as alleged If so, its effect? ..*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Dila Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that after 31.5.2006 he abandoned the job. He also denied that the instant industrial dispute has been raised by him at a belated stage and he is not entitled to the re-employment etc.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that almost all the workmen whose names figure in para No.3 of the proof affidavit Ex. PW1/A are junior to the petitioner and they are still working under him. Their services have also been regularized. He admitted that no notice of willful absenteeism was

issued to the petitioner asking him to rejoin his duties. He denied that he has given a phoney statement.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Shri Shashi Kant s/o Shri Bihari Lal, a daily wager working under the respondent.

11. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar on 01.8.1998 and he continuously worked as such up-to 31.5.2006. The version of the petitioner is that on 1st June, 2006, his services were terminated by the Assistant Engineer, HPPWD, Dharampur by an oral order as per the directions issued by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

12. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was sent to the petitioner asking him to resume the work after he allegedly left/abandoned the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

13. As already mentioned, it is the admitted case of the parties that the petitioner served as a daily wager continuously from 01.8.1998 to 31.5.2006. In para No.2 of the claim petition, the petitioner has pleaded that he completed more than 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his termination i.e. 01.6.2006. The said fact has not been denied specifically by the respondent in the reply.

14. Section 25-F of the Act postulates as under:-

"25-F. Conditions precedent to retrenchment of workmen.-
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

15. There is nothing on the file to show that the provisions of above quoted Section were complied with by the respondent at the time of the disengagement of the services of the petitioner.

16. Not only this, Ex. PW1/B is the mandays chart pertaining to Shri Shashi Kant (workman). Its perusal discloses that the services of Shri Shashi Kant were engaged by the

respondent in the month of January, 2000. He is junior to the petitioner, who was employed on 01.8.1998. Ex. PW1/B clarifies that at the time of the termination of the services of the petitioner, the services of Shri Shashi Kant were not dispensed with by the respondent. The latter failed to adhere to the principle of 'last come first go'. The action of the respondent thus contravenes the provisions of Section 25-G of the Act as well.

17. That being so, I have no hesitation to conclude that the retrenchment of the services of the petitioner by the respondent is illegal and unjustified.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

23. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.6.2006 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 359/2012

Date of Institution : 05.11.2012

Date of Decision : 15.10.2013

Shri Naresh Kumar s/o Shri Jawahar Lal, r/o Village & P.O. Saklana, Tehsil Sarkaghat, Distt. Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether retrenchment of services of Sh. Naresh Kumar S/O Sh. Jawahar Lal, Village & P.O. Saklana, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent on 01.8.1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed

240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

> "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
>
> 2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
>
> 3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.08.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone,

Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 02.7.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR.*

4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Naresh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.08.1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex.PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 3 and 5

18. Not pressed.

ISSUE NO. 4

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the issues No.1 and 4, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 357/2012

Date of Institution : 15.10.2012

Date of Decision : 15.10.2013

Shri Bir Singh s/o Shri Ram Singh, r/o Village Kulwahan, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether retrenchment of services of Sh. Bir Singh S/O Sh. Ram Singh, Village-Kulwahan, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provision of the Industrial disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the month of April, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the month of April, 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 02.7.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR.*

4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Bir Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the month of April, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex.PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 3 and 5

18. Not pressed.

ISSUE NO. 4

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 130/2011

Date of Institution : 28.11.2011

Date of Decision : 15.10.2013

Shri Gurmail Singh s/o Shri Harnam Singh, r/o Village and P.O. Raipur Sahoda, District Una, H.P. ..*Petitioner.*

Versus

The Managing Director, M/S Nipso Polyfabriks Limited, Plot No.30-31, Industrial Area, Mehatpur, District Una, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Virendra Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether the verbal termination of services of Shri Gurmail Singh S/O Shri Harnam Singh, R/O Village and P.O. Raipur Sahoda, District Una, H.P., Electrician, by the Managing Director, M/S Nipso Polyfabriks Limited, Plot No.-30-31, Industrial Area, Mehatpur, District Una, H.P. w.e.f. 27-05-2010 without notice, charge sheet, holding of enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an Electrician by the respondent w.e.f. 18.7.2002. No appointment order/letter was issued in his name by the respondent. He worked as such up-to 26.5.2010. He (petitioner) completed more than 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months prior to the date of his termination. On 27.5.2010, he reported for duty in the factory in B shift. The Security Guard Shri Ramesh Kumar informed him (petitioner) that he has received the instructions from the management not to allow him (petitioner) to discharge the duties in B shift. After that, he was not permitted by the respondent/management to work in the factory. His services were terminated by the respondent on 27.5.2010 itself by a verbal order. Before the termination of his services, no notice was given to him. Even no inquiry was conducted against him for the misconduct, if any. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him by the respondent/management. At the time of the disengagement of his services, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last

come first go'. Not only this, after the termination of his services new electricians have been appointed by the respondent. He was not given an opportunity of re-employment. During service period, he was not provided any attendance card, wage slip or seniority list of the electricians by the respondent. He (petitioner) was appointed as an electrician. He is a highly skilled workman having ITI certificate. He obtained the diploma from the ITI in the year 1975. The respondent gave him less wages than the wages fixed by the State Government from time to time under the Minimum Wages Act, 1948. At the time of his termination, he was drawing the salary amounting to Rs.3300/- per month. The wages from 01.5.2010 to 26.5.2010 have not been paid to him by the respondent in contravention of the provisions of Section 5 (2) of the Minimum Wages Act, 1948. He was not given the benefit of earned leave, casual leave and sick leave etc. by the respondent during the period of his employment. The bonus and the benefit of provident fund were also not extended in his favour by the respondent/management. When he demanded all due benefits from the respondent, his services were terminated which amounts to unfair labour practice. From the date of his termination, he is unemployed. A demand notice dated 15.6.2010 was served upon the respondent by him, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> i) The Hon'ble Court may kindly be set aside the illegal termination order dated 27.05.2010 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority with all other consequential service benefits.
>
> ii) The Hon'ble Court again may kindly be determine the less wages paid to applicant for the period from 18.07.2002 to 26.5.2010 under the Minimum Wages Act, 1948 and directed to respondent to pay the difference of wages to the applicant along with interest @ 12% per annum and also directed to pay the bonus and EPF to the petitioner under the provision of Act from the date of his appointment to the date of his termination".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has suppressed the true and material facts from the Court because of which he is not entitled to any relief.

On merits, it has been owned that the services of the petitioner were engaged as an Electrician in the company. However, it has been denied that he was appointed on 18.7.2002. Instead, the services of the petitioner were engaged on 01.9.2006 pursuant to an application of even date moved by him. The monthly salary of the petitioner was fixed as Rs.2500/- which was accepted by him. The petitioner joined his duties on 01.9.2006. It has been denied that on 27.5.2010, when the petitioner reported for duty in B shift, the security guard did not allow him to enter the factory No such instructions were issued to Mr. Ramesh Kumar, security guard. The services of the petitioner were never terminated as alleged. Actually, the petitioner is a habitual absentee. He used to remain absent from duty without any prior permission and information for days together. In the month of May, 2010, he remained absent continuously for 14 days. The petitioner also committed gross negligence. He switched on the power supply from HPSEB mains while the generator set was running. Resultantly, a blast took place in the factory which might have caused a major fire. When he (respondent) asked the petitioner regarding the reason for his absence from duty and the negligence, he (petitioner) misbehaved with him (respondent). The petitioner bluntly told him (respondent) that he wants to quit the job as well as full and final payment of dues be made to him. All the dues were then paid to the petitioner who voluntarily left the job. The

incident was also reported by him (respondent) to the Labour Inspector, Una vide letter dated 08.7.2010. Prior to it also the petitioner had committed many acts of negligence and careless mistakes. Explanation of the petitioner was called vide letter dated 18.1.2010 for his absence from duty since 11th January, 2010. The explanation/letter was duly received by the petitioner on the same day i.e. 18.1.2010. No explanation was submitted by him. On 21.1.2010 he gave a written undertaking that he will not absent from duty in future without prior intimation failing which, action may be taken against him. Since the petitioner voluntarily left the service, he is not entitled to any protection under the Act. He did not complete 240 days of work in any calendar year of his employment. No provision of any of the Acts or the Rules has been flouted. Attendance card and other due benefits were duly given to the petitioner from time to time. When the petitioner left the job, he was getting Rs.3515/- per month as salary. He was not paid the salary for 14 days of the month of May, 2010 since he remained absent from duty without any intimation/information and permission. After leaving the job, the petitioner joined some other organization. He is gainfully employed. A false story has been invented by the petitioner. He is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that initially his services were engaged on temporary basis. Neither he absented from his duties nor committed any act of negligence or misconduct. He never asked the respondent to make the payment of his full and final dues. He did not leave the job.

5. Per order dated 27.9.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 27.05.2010 is illegal and unjustified? ..*OPP.*

2. Whether the petition is not maintainable in the present form? ..*OPR.*

3. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Gurmail Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he cannot say that Mark-A (later on exhibited as Ex. RW1/F) and Mark-B bears his signatures or not. He admitted that when he joined the service, he was paid Rs.2500/- per month by the respondent. He also admitted that once during his service period, there was failure of the electric supply. He denied that on the failure of the power supply the generating sets started working automatically. Self stated, the generators were switched on by him. He denied that after the electric supply was restored, he connected the electric wires of the generators with the HPSEB line because of which there was a blast. He also denied that because of the blast, there might have been a fire incident in the factory due of his fault. He refuted that he committed several mistakes during the period of his employment. He denied that the respondent had asked him to explain his position per letter dated 12.1.2010 (Mark-B) and he did not give any reply to the said letter as well as remained absent from his duties for 14 days. Volunteered, he absented for only two days. Thereafter, for 10 days he was not allowed to enter the factory premises and was forced to sit on the gate of the factory. He admitted that the undertaking Ex. R1 was furnished by him. He denied that after giving the undertaking Ex. R1, he again absented from his duties and when the respondent confronted him, he left the job. He denied that he is not entitled to the re-employment etc.

9. Conversely, Shri Ravi Dutt Sharma, Manager Administration of the respondent testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he stated that no inquiry was conducted against the petitioner for his willful absence from duty or misbehaving with the Managing Director. No notice under Section 25-F of the Act and retrenchment compensation were given to the petitioner. He denied that the services of the petitioner were disengaged in an unlawful manner.

10. Mark-A (subsequently exhibited as Ex. RW1/F) is the original application submitted by the petitioner before the respondent for employing him on a suitable post. The petitioner had applied for the post of the electrician.

11. Mark-B is a letter dated 18.1.2010 regarding absence from duty handed over to the petitioner by the respondent.

12. Exts. RW1/B1 to B45 are the copies of the attendance register from September, 2006 to May, 2010 pertaining to the respondent/factory.

13. Ex. RW1/C is the letter dated 08.7.2010 written by the respondent to the Labour Inspector, Una. In this letter, it was high lighted that the petitioner committed a major blunder which resulted in a blast and blew off all the main fuses.

14. Ex. RW1/D is another letter dated 18.10.2010 written by the respondent to the Labour Inspector, Una. Vide this letter, the service record of the petitioner was forwarded to the Labour Inspector.

15. Ex. RW1/E is the copy of the letter dated 23.11.2010 written by the respondent to the Labour Inspector, Una, during the conciliation proceedings.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent as an Electrician. The petitioner has maintained that his services were engaged w.e.f. 18.7.2002. On the other hand, the respondent has pleaded that the petitioner was initially employed on 01.9.2006 pursuant to an application of even date (Ex. RW1/F) moved by him.

17. The first and foremost things, which requires determination at the hands of this Court, is as to when the services of the petitioner were actually engaged by the respondent? The

application submitted by the petitioner for his appointment as an Electrician (Ex. RW1/F) has been produced by the respondent. Its perusal discloses that the cutting has been made in the date of the joining of the petitioner from 18.2.2002 to 01.9.2006. An official of the respondent has made an endorsement on the application that the petitioner is appointed as an Electrician on payment of Rs.2500/- per mensem as wages. Such endorsement has been made on 18th February. If the petitioner was employed on 1st September, 2006, (as claimed by the respondent), then how and on what basis an endorsement was made on Ex. RW1/F on 18th February that the services of the petitioner have been engaged as an Electrician on payment of the monthly salary of Rs.2500/-? The petitioner (PW1) in his cross-examination admitted that when he was employed, he was drawing Rs.2500/- every month as wages. Ex. RW1/F makes it clear that the services of the petitioner were engaged by the respondent on 18.2.2002 only. Cuttings/interpolations have been made in the application by the respondent with an ulterior motive since the said application was in his possession.

18. Now comes the question as to whether the services of the petitioner were terminated by the respondent wrongly and illegally or not?

The version of the petitioner is that on the crucial date i.e. 27.5.2010, when he reported for duty in the B shift, he was not permitted to work. On that day his services were dispensed with by the respondent unlawfully. While denying the said fact, the respondent has pleaded that the petitioner committed many acts of gross misconduct and negligence during the period of his employment. He also used to remain habitually absent from his duties. When the Managing Director of the company confronted the petitioner regarding his work and conduct, the latter misbehaved with him (Managing Director) as well as asked him to make the full and final payment and left the job.

19. It is an admitted fact that neither the petitioner was charge sheeted nor an inquiry was conducted against him for the misconduct, if any at any point of time. The undertaking dated 21.1.2010 (Ex.R1) given by the petitioner to the effect that he will not absent from his duties in future will not effect the respondent and absolve him from conducting an inquiry against the petitioner/workman for the misconduct viz. absence from duty etc. At the most, Ex. R1 could be used by the respondent as a piece of evidence during the inquiry proceedings.

20. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Admittedly, no notice was served upon the petitioner by the respondent calling upon him to resume his duties after he allegedly left/abandoned the job. The respondent has failed to produce any record except the copy of the salary register to show that on the request of the petitioner, full and final payment of his dues was made to him. As mentioned earlier, no disciplinary proceedings were ever initiated against the petitioner for willful absence from duty or the misconduct, if any.

21. The petitioner (PW1) in his examination-in-chief categorically stated that he had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months anterior to the date of his termination i.e. 27.5.2010. The said fact has not been challenged by the respondent during the cross-examination. It is the basic law that if a fact goes unrebutted and unchallenged at the time of the cross-examination, the same is presumed to be admitted by the other side.

22. Section 25-F of the Act postulates as under:

> "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

23. There is not even an iota of evidence on the file to show that the provisions of the above quoted Section were complied with by the respondent before the disengagement of the services of the petitioner. That being so, it can be safely said that the respondent has contravened the provisions of Section 25-F of the Act. For the said reason, the termination of the services of the petitioner by the respondent is illegal and unjustified.

24. While testifying in the Court as PW1, the petitioner has given his age as 55 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

25. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

26. Taking into account my findings on issue No.1, it is held that the claim petition is maintainable in the present form.

27. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

28. Not pressed.

RELIEF (ISSUE NO. 4)

29. As a sequel to my findings on the issues No. 1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 27.5.2010 except back wages. Parties to bear their own costs.

30. It is made clear that the respondent will be at liberty to initiate disciplinary proceedings against the petitioner and take appropriate action against him as per law.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 281/2012

Date of Institution : 16.7.2012

Date of Decision : 15.10.2013

Shri Jagdish Chand s/o Shri Tulsi Ram, r/o Village & Post Office Chalarag, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, Distt. Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L, Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. B.K. Sood, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Jagdish Chand S/O Sh. Tulsi Ram, Village & Post Office-Chalarag, Tehsil Joginder Nagar, Distt. Mandi by The Executive Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, Distt. Mandi, H.P. w.e.f. 25.4.1998 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent w.e.f. 25.11.1997. He worked as such up-to 24.4.1998 under the supervision of the Assistant Engineer, HPSEB Sub Division, Makriri. During the period of his engagement, artificial/fictional breaks in service were provided to him by the respondent from time to time. On 25th April, 1998, his

services were terminated by the respondent by a verbal order. Before the disengagement of his services, neither any notice was given to him nor he was charge sheeted. No inquiry was conducted against him for the misconduct, if any. One month pay in lieu of notice period and the retrenchment compensation were also not paid to him by the respondent/Board. His services were terminated on the pretext that the work and funds are not available. As and when the same are available, his name will be duly considered for re-engagement on the basis of the seniority. He approached the Assistant Engineer, Electrical Sub Division Makriri time and again from the year 1999 to 2001 to re-engage his services, but in vain. He (petitioner) then preferred Original Application No. (M) 449/2001 before the erstwhile Himachal Pradesh Administrative Tribunal for the redressal of his grievances. Such Original Application was disposed of by the Hon'ble Administrative Tribunal on 27.2.2002 with the remarks that it has no jurisdiction to deal with the same. He (petitioner) was given the liberty to approach the competent Court/Forum for the redressal of his grievances. His ld. counsel did not inform him regarding the order passed by the Hon'ble Administrative Tribunal. He (petitioner) came to know about the order of the Hon'ble Administrative Tribunal only when he approached his ld. advocate personally. Thereafter, a demand notice under Section 2-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) was served upon the respondent by him. Conciliation proceedings were initiated by the Labour Inspector-cum-Conciliation Officer, Joginder Nagar, but of no avail. Failure report under Section 12(4) of the Act was forwarded by the Conciliation Officer to the appropriate Govt. The appropriate Govt. viz. Labour Commissioner, Himachal Pradesh, Shimla refused to refer the matter to this Court on the ground that he (petitioner) did not complete 240 days of work before the date of his retrenchment. The order dated 04.4.2008 pronounced by the Labour Commissioner, Himachal Pradesh, Shimla was assailed by him (petitioner) before the Hon'ble High Court of Himachal Pradesh by way of a Civil Writ Petition under Articles 226 and 227 of the Constitution of India. The said CWP bearing No.2758/2008 J was decided by the Hon'ble High Court per order/judgment dated 14.5.2012. The order dated 04.4.2008 of the appropriate Govt. (Labour Commissioner) was set aside and he was directed to make the reference to this Court under Section 10 of the Act. At the time of his (petitioner's) termination, the persons junior to him namely S/Sh. Dharampal and Chatter Singh etc. were retained in service by the respondent. Not only this, after his disengagement, new/fresh hands have been recruited by the respondent. The names of the newly appointed persons are S/Sh. Raj Kumar and Molak Ram etc. He was not given an opportunity of re-employment. The persons whose services were engaged by the respondent on daily wage basis w.e.f. 25.11.1997, have been regularized by the respondent/Board as per the seniority from the year 1994 onwards subject to the availability of the post as work-charge T-Mate in regular pay scale of Rs.750-1410/- revised w.e.f. 01.1.1996 Rs.2520-4140/- and 01.1.2006 Rs.5100-10680/- plus other allowances and grade pay. He (petitioner) is also entitled to the regularization of his services since the persons junior to him have already been regularized. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act read with the Industrial Standing Orders, 1946 as adopted by the Board.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

> "i) The Hon'ble may kindly be set aside the illegal termination order dated 25.04.1998 and directed to respondent to reinstate the services of applicant and also directed to pay full back wages, seniority, continuity of service from the date of his initial appointment i.e. 25.11.1997.
>
> ii) The Hon'ble may kindly be again directed to the respondent to regularize the services of the petitioner as per his seniority on regular pay scale and fix him in daily wager seniority list or work charge seniority list above to juniors.
>
> iii) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a daily waged beldar on 25.11.1997 and he worked as such up-to 24.4.1998 with certain absents. The services of the petitioner were never disengaged as alleged. In-fact, he left the job voluntarily. The petitioner never approached the Assistant Engineer or Junior Engineer for re-engagement. It stands admitted that the petitioner had approached the Hon'ble Administrative Tribunal and, thereafter, the Hon'ble High Court of Himachal Pradesh against the termination order. After the petitioner abandoned the job, it came to his (respondent's) knowledge that he (petitioner) had gone to undertake SSB training at Sarahan in District Shimla. The petitioner left the service despite the availability of the work. He cannot claim parity with the workmen whose names have been disclosed by him since they worked in continuity. No provision of the Act or the Standing Orders has been flouted. Now, it is impossible to re-engage the services of the petitioner due to the non availability of the work. Moreover, the Board has imposed a ban on the employment of the casual labour. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that he willingly left the service to undergo SSB training.

5. Per order dated 26.02.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 25.04.1998 is illegal and unjustified as alleged? ..*OPP*.

2. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Jagdish Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were never dispensed with by the respondent. He had undergone the SSB training at Sarahan District Shimla. He denied that he took the training after 24.4.1998. He underwent the training in the years 1994-1995. He denied that he has instituted a phoney petition.

9. Conversely, Shri Atul Kumar Mehta, Executive Engineer, HPSEB, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that when the petitioner allegedly left the service, no notice was given to him calling upon him to resume the work. Even no departmental proceedings were initiated against the petitioner. He admitted that the persons junior to the petitioner are serving under him (RW1). He also admitted that after 25.4.1998 new/fresh hands have been employed. Self stated, new/fresh hands have been appointed as per the orders of the Court. When new/fresh hands were engaged, an opportunity of reemployment was not afforded to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner.

10. Ex. PW1/B is the detail of service particulars of daily waged beldars as it stood on 30.9.2007 relating to the office of the respondent.

11. Ex. PW1/C is the copy of the order dated February 27, 2002 pronounced by the Hon'ble Administrative Tribunal in OA (M) No. 449/2001 titled as Jagdish versus HPSEB through its Secretary and another.

12. EX. RW1/B is the mandays chart relating to the petitioner.

13. Ex. PA is the copy of the demand notice dated 15.2.2006 served upon the respondent by the petitioner under Section 2-A of the Act.

14. Ex. PB is the copy of the reply submitted by the respondent before the Labour-cum-Conciliation Officer, Mandi during the conciliation proceedings which were initiated pursuant to the demand notice served by the petitioner.

15. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding providing the intentional breaks in service to the petitioner by the respondent. The said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar on 25.11.1997 and he worked as such up-to 24.4.1998. The version of the petitioner is that on 25.4.1998, his services were terminated by the respondent by an oral order wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition to undergo the SSB training.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner calling upon him to resume his duties after he allegedly left/abandoned the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. Otherwise too, the petitioner (PW1) in his cross-examination stated that he underwent SSB training in the years 1994-995. That being so, there is no question of the abandonment of the services by the petitioner in the month of April, 1998 for the SSB training.

18. The mandays chart Ex. RW1/B depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 25.4.1998 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

19. From the seniority list/service particulars of daily waged beldars (Ex.PW1/B), it can be gathered that at the time of the disengagement of the services of the petitioner, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. The respondent (RW1) admitted that the persons junior to the petitioner are serving under him. Not only this, RW1 admitted that after 25.4.1998, new/fresh hands were appointed and an opportunity of re-employment was not afforded to the petitioner. This fact finds support from Ex. PW1/B. The evidence adduced by the parties makes it crystal clear that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is thus illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

20. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

21. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 2)

22. Taking into consideration, my findings on issue No. 1 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 25.4.1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government/Board from time to time. It is clarified that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 133/2011

Date of Institution : 28.11.2011

Date of Decision : 15.10.2013

Shri Rajesh Kumar s/o Shri Changa Ram, r/o Village & P.O. Shamshi, District Kullu, H.P.
..Petitioner.

Versus

The Divisional Forest Officer, Parvati Forest Division, Shamshi, District Kullu, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Kumar Gupta, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether the verbal termination of services of Shri Rajesh Kumar S/O Shri Changa Ram, Village & P.O. Shamshi, District Kullu, H.P. part time sweeper by the Divisional Forest Officer, Parvati Forest Division, Shamshi, District Kullu, H.P. w.e.f. 01-06-2010 without complying with the provisions Section 25-F of the Industrial Disputes Act, 1947 is legal and justified. If not, to what back wages, service benefits and relief the above named worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a part time worker on 1st August, 2009 by the respondent for the upkeep of Rest House, Bhuin and Range Office, Hurla. He continuously worked as such up-to 31st May, 2010 and completed more than 240 days of work. On 1st June, 2010 his services were terminated by the respondent by a verbal order. Before the disengagement of his services, neither any notice was given to him nor the retrenchment compensation was paid. A demand notice dated 16th July, 2010 was served upon the respondent by him (petitioner). Conciliation proceedings were initiated by the Labour Officer at Kullu, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order dated 01.6.2010 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action to maintain the claim petition.

On merits, it has been owned that the services of the petitioner were engaged as a part time sweeper on 01.8.2009 for the upkeep of Forest Rest House, Bhuin and Range Office, Hurla. The petitioner worked on bill basis for a short period as per the availability of the funds. His services

were disengaged on 31.5.2010 for want of funds by applying the principle of 'last come first go'. He (petitioner) did not complete 240 days of work as claimed. Wages up-to date have been paid to the petitioner. The dispute raised by him does not fall within the purview of the Act. The petitioner is/was not a workman. No notice was required to be given to him. Even the petitioner is/was not entitled to the retrenchment compensation as claimed. He is gainfully employed privately. The industrial dispute has been raised by the petitioner at a belated stage. He is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 04.12.2012, following issues were struck:

1. Whether the verbal termination of the services of the petitioner by the respondent w.e.f. 01.6.2010 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action? ..*OPP.*

3. Whether the claim petition is not maintainable in the present form? ..*OPR.*

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

8. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

9. Shri Rajesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged by the respondent in the Forest Rest House, Bhuin for three hours daily. He was also made the payment for the working hours put in by him per vouchers Exts. R1 to R10. The vouchers have been signed by him. He worked as a part time worker up-to 31.5.2010. He feigned ignorance about the fact that after 31.5.2010, no budget for the Rest House was allotted because of which the respondent could not engage his services further. He denied that at the time of his appointment, it was conveyed to him by the respondent that his part time service will depend upon the availability of the budget. He admitted that when his services were disengaged no person junior to him was serving the respondent. He also admitted that the other part time workers namely Smt. Savitri Devi and Smt. Aarti Devi are senior to him. Nowadays, he works privately. When he was working under the respondent, after the duty hours, he used to do the private work as and when it was available. He denied that to gain the employment in a wrongful manner, he has instituted a phoney petition.

10. Conversely, Shri Sandeep Sharma, Divisional Forest Officer, Parvati Forest Division, Shamshi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner worked for 240 days and his services were disengaged illegally.

11. Ex. PW1/B is the reply submitted by the respondent before the Conciliation-cum-Labour Officer, Kullu during the conciliation proceedings which were initiated pursuant to a demand notice served by the petitioner under Section 2-A of the Act.

12. Ex. PW1/C is the copy of a letter dated 11.7.1995 issued by the Department of Personnel, Government of Himachal Pradesh. As per this letter, instructions were issued for regularization of the daily waged workers working in various departments.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the list of other part time workers working under the respondent. It depicts that Miss Savitri Devi and Smt. Aarti Devi were employed by the respondent in the years 2002 and 2007 respectively. Both of them are senior to the petitioner who was employed on 01.8.2009.

15. Ex. RW1/D is the copy of a notification dated 28.4.2009 issued by the Forest Department, Government of Himachal Pradesh. It unfolds that bill/tender system for all the workers was introduced in the department.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a part time safai karamchari by the respondent on 01.8.2009 and he worked as such up-to 31.5.2010. Admittedly, no appointment letter or muster roll was issued in the name of the petitioner by the respondent at any point of time.

17. The evidence available on the record clarifies that the petitioner used to work for three hours daily under the respondent. He worked on bill basis and the payment for the total working hours put in by him was made as per the vouchers Exts. R1 to R10. The claimant/petitioner has admitted that all the vouchers bear his signatures as a token of the receipt of the money. The petitioner (PW1) also admitted during the cross-examination that after the duty hours he used to work privately.

18. It is well known that if a person is employed for doing the part time work on bill basis, he cannot be termed as a daily wager. At the most, the petitioner can be said to be a

contractual employee working under the respondent. The latter has taken the plea that the part time services of the petitioner could not be continued because of non availability of the budget. To my thinking, the disengagement of the services of the petitioner by the respondent does not come within the mischief of the word 'retrenchment' as per clause (bb) of Section 2(oo) of the Act. The provisions of Section 25-F of the Act are not attracted in this case.

19. The petitioner (PW1) admitted that at the time of the disengagement of his services, no part time worker junior to him was retained in service by the respondent. Ex. RW1/C clarifies that the other part time workers serving the respondent namely Smt. Savitri Devi and Smt. Aarti Devi are senior to the petitioner. It is not the case of the petitioner that after the termination of his services, new/fresh hands have been employed by the respondent. For these reasons, it cannot be said that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act.

20. That being so, I have no hesitation to conclude that the petitioner has no cause of action. The claim petition is not maintainable in the present form. The alleged verbal termination of the services of the petitioner by the respondent is neither illegal nor unjustified. It appears to me that the avarice of the petitioner to grab the money and government job has forced him to file a totally false and baseless claim. He is not entitled to any relief.

21. These issues are decided against the petitioner and in favour of his opponent.

ISSUE NO. 4

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the issues No. 1 to 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/- (Three thousand only).

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 80/2011

Date of Institution : 25.6.2011

Date of Decision : 22.10.2013

The Pradhan, Himachal Road Transport Corporation, Operational Staff (Drivers & Conductors) Union, Registration No:399, Dehra, District Kangra, H.P. ..*Petitioners.*

Versus

1. The Managing Director, Himachal Road Transport Corporation, Shimla-3

2. The Divisional Manager, HRTC, Hamirpur, District Hamirpur, H.P.

3. The Regional Manager, HRTC, Depot Dehra, District Kangra, H.P.

..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondents : Sh. Pradeep Dogra, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether demands raised by The Pradhan, Himachal Road Transport Corporation, Operational Staff (Drivers & Conductor) Union, Registration No. 399, Dehra, Distt. Kangra vide demand notice dated-15.7.2010 (Copy-enclosed) before The Regional Manager, Himachal Road Transport Corporation, Dehra, are legally maintainable and justified? If yes, to what service, monetary benefits & relief the Drivers & Conductors are entitled to as per demand notice dated 15.7.2010? If not, what are its legal effects?"

2. The case of the petitioner/union (as set out in the statement of claim/demand) reads thus:-

"1. That the Himachal Road Transport Corporation (Drivers & Conductors) Operational Staff Union has been registered by the Registrar of Trade Union under the Trade Union Act, 1926 and having registration no 399/86 and the same union has been recognized by the respondents.

2. That the workmen union has been raised the demand notice to the respondents vide demand notice dated 15-07-2010 and copy of the same were forwarded to the Labour Inspector cum Conciliation Officer, Dehra and during the conciliation proceeding before the Conciliation Officer the demands raised by the union has not accepted by the respondents and thereafter a report under Section 12(4) has been sent by the Conciliation Officer to the appropriate government vide his report no LI/DEH/ID/10-538 dated 18-12-2010 and the same dispute has been culminated the present dispute under Section 2-K of the Industrial Disputes Act, 1947.

3. That the HRTC is the Corporation of State Government and the Motor Transport Workers Act, 1961 is applicable to respondents and its employees including drivers and conductors are entitled the benefit under this Act also.

Brief facts of the case

1. That the workmen union raised the demand vide demand notice dated 15-07-2010 wherein demanded to pay the overtime to drivers and conductors as per the office order issued by Managing Director, HRTC, Shimla vide his letter no HO:4-5/OTA/Speed Limit/99-Lab dated 29-08-2008 as per the time table framed by the Regional Transport Officer, instead of speed limit. Whereas the overtime have been made to the drivers and conductors before 29-08-2008 on the basis of speed limit.

2. That it is submitted here that as per the letter dated 29.8.2008 addressed to all the unit officer in Himachal Road Transport Corporation including respondent no 3 and copy of the same forwarded to the all the Divisional Manager, HRTC, Hamirpur, Dharamshala and Shimla for their information and necessary and on the basis of this office order dated 29.8.2008 the respondent no 3 have been implemented the order of respondent no 1 and pay the over time to conductors and drivers after 3 months of this office order and the same has been paid to them up to June, 2009 continuously. It is submitted here the 50 numbers of drivers and 35 conductors are discharging their duties in different routes in different station every day and involved in this matter. The list of drivers and conductors is enclosed herewith as annexure P-1. The payment calculation of individual drivers and conductors be submits before the Hon'ble this court and copy of the same be supply to the respondent before framing the issue. It is submitted here that the respondents have also made the payments to drivers and conductors whose name mentioned in annexure P-1 in old pay scale w.e.f. 01-01-2006 to 31.12.2008 hence all the drivers and conductors are also entitled for difference of payment on account of overtime in new pay scale w.e.f. 01-01-2006 to 31-12-2008.

3. That it is categorically submitted here that the state government has revised the pay scale of w.e.f. 01-01-2006 to all the government employees and respondents have also revised the pay scale to its employees including drivers and conductors in the year 2009. It is submitted here that the respondents are paying the overtime to the drivers and conductors on their old pay scale Basis + D.A. instead of new pay scale as Basic+ Grade Pay +D.A. Hence all the drivers and conductors are entitled the overtime in new pay scale of 2006 w.e.f. -01-01-2009 to onwards as on 31-08-2011

as per the Motor Transport Workers Act, 1961. It is again submitted here the respondent no 3 have been paid the some overtime payments to drivers and conductors up to 31-01-2011 on the basis of old pay scale.

4. That as per the calculation under the Motor Transport Workers Act, 1961 Sub Section 2 of Section 19 of the Act wherein A workmen actually gets monthly wages for the work done only for 26 days. Thus for a workman it is the actual receipt for the 26 days which he is monthly scale of pay i.e. 30 days wages. Therefore a days wage should mean result obtained by dividing the monthly basic pay plus dearness allowances divided by actual number of working days i.e. 26 days. According to Section 19 (2) of the Act, it is double his daily wage which a transport worker is entitled to if he works on a day of rest. Therefore when a transport worker works on the day of rest he is entitled to double the daily rate of wage.

5. That as per the Section 26 under the Motor Transport Worker Act, 1961 determination of the formula to be applied for the calculation of overtime wages of the staffs- The Corporation having so agreed to the reduction of the working hours cannot shirk the consequences directly flowing from such fixation of hours of work. A conjoint reading of Sec. 13 and Sec. 37 of the Motor Transport Workers Act, is to substitute the eight hours of work referred to in Sec. 13 by seven hours agreement and safeguarded under the proviso to Sec. 37. What had been initially a matter of agreement obtained a statutory flavor by its having been brought within the protective provision of the proviso to Sec.37. The seven hours working day became a statutory recognized condition of service as a result of the inter-reaction of Sec. 13 and Sec. 37 of the Act. That being so, when by a statutory fiction as it were, the working hours of the ministerial staff got transmitted to seven, the statutory fiction should be permitted to have its full pay and sway. It is well settled that in such circumstances, the Court should not permit its imagination to be boggled when it comes to the question of giving full force and effect to the deeming provision. The formula in this background for the computation of the overtime wages bearing in mind the ingredients of Sec. 14 of the Minimum Wages Act, 1948 (which in term attracts Sec. 26 of the Act) has necessarily to be what had been referred to by the Assistant Transport Officer.

$$\frac{\text{“2 (Pay+DA+Variable DA)}}{\text{No. of days of month x 7” 2}}$$

6. That it is specifically stated here that as per the letter of respondent no 2 i.e. Divisional Manager, HRTC, Hamirpur addressed to Dy D.M/Regional Manager, HRTC, Una/Nalagarh/Bilaspur/Hamirpur and Dehra vide his letter no HRTC/D.M.-HMR/2-OTA/2009-10-4863 dated 13-01-2010 wherein the respondent no 2 have been issued the instruction to pay the overtime allowance to the drivers and conductors on the basis of speed limit not as per the instruction issued by respondent dated 29-08-2008 and the instruction dated 29-08-2008 has been withdrawal by the Corporation as per the committee held on 16th December, 2009. It is submitted here that before change the term and condition to the drivers and conductors for calculating the hours for overtime and withdrawal the instruction issued by respondent no 1 vide his office order dated 29-08-2008 no prior notice served to the union as per forth schedule of the Industrial Disputes Act, 1947 and the same has been violated under Section 9-A of the Industrial Disputes Act, 1947. Hence the Divisional Manager is not competent to issue the instruction to withdrawal the instruction dated 29-08-2008.

7. That it is again specifically stated here that the respondent has change the service condition for calculating the hours for overtime w.e.f. 01-07-2009 but the policy framing committee held 16-12-2009 and instruction has been issued by the respondent no 2 dated 13-01-2010 and the same has been also against the provision of Motor Transport Workers Act, 1961 as well as Industrial Disputes Act, 1947, Section 9-A of the Ibid Act.

8. That the act of the respondents to withdrawal of calculating the overtime hours as per the instruction of RTO time table basis and granted the overtime hours on speed limit is highly unjustified, arbitrary, unconstitutional, contrary and against the mandatory provisions of Industrial Disputes Act, 1947 as well as Motor Transport Workers Act, 1961.

Relief Sought,

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

i) The Hon'ble Court may kindly be determine the facts of the case regarding payment of overtime to the drivers and conductors for the period from 01-012009 to 31-08-2011 and directed to respondents to make the payments to drivers and conductors as per the instructions issued by the respondent no1 vide his office order dated 29-08-2008 and also set aside the policy framing committee held on 16-12-2009 vide letter of respondent no 2 dated 13-01-2010.

ii) The Hon'ble Court may again kindly be directed to respondents to calculated the overtime hours of drivers and conductors as per the overtime done by them as per office order dated 29-08-2008 and pay the rate as per Section 19 and Section 26 of the Motor Transport Workers Act, 1961 for the period from 01-01-2009 to 31-08-2011 in the pay scale of 01-01-2006 instead of pay scale 01-01-1996 and also directed to respondents to make the payments to the drivers and conductors for the aforesaid period along with 12% interest to delay the payment from the date of demand notice to onwards till the date of realization the amounts.

iii) The Hon'ble Court further kindly be directed to respondents to pay the difference of overtime payment made to drivers and conductors for the period from 01-01-2006 to 31-12-2008 in pay scale of 01-01-2006".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The same is wholly misconceived, groundless, baseless and flagrant abuse of process of law. The petition has been preferred to harass and blackmail them (respondents) as well as derive undue advantages. The petitioner has no cause of action and locus standi to sue. He (petitioner) is estopped from filing the claim petition by his act, conduct and acquiescence. The claim petition is frivolous and vexatious. The petitioner has concealed the true and material facts. The petitioner has not approached the Court/Tribunal with clean hands.

On merits, it has been owned that the union is recognized by the Registrar of Trade Unions as well as a demand notice dated 15.7.2010 was issued by the petitioner/union. However, it has been pleaded that the petitioner/union had instituted a civil writ petition on the same grounds and

the same cause of action before the Hon'ble High Court of Himachal Pradesh, Shimla. Such civil writ petition was argued at length. The Hon'ble High Court reached the conclusion that the matter in dispute can be decided by the committee. The civil writ petition was treated as representation and the Managing Director (respondent No.1) was directed to decide the same within three months. The parties were called by the respondent No.1. An order in accordance with the provisions of law was passed by the Managing Director (respondent No.1). The copies of the order were sent to all the Sub Divisions and depots of the HRTC (Himachal Road Transport Corporation). All depots and the Sub Divisions are following the orders pronounced by the respondent No.1. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be dismissed with special costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that he/it (petitioner/union) never filed any writ petition on the similar grounds before the Hon'ble High Court of Himachal Pradesh. He is not aware of any order passed by the Hon'ble High Court and did not participate in the meeting convened by the respondent No.1. Overtime allowance totaling Rs.1,49,32,377/- (one crore forty nine lakhs thirty two thousand and three hundred seventy seven) is due to the members of the union.

5. Per order dated 27.2.2012, following issues were struck:

1. Whether the demands raised by the Pradhan, Himachal Road Transport Corporation, Operational Staff (Drivers and Conductor) Union, Registration No.399, Dehra, Distt. Kangra vide demand notice dated 15-7-2010 are legally maintainable and justified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action. ..*OPP.*

3. Whether the petitioner has the locus-standi to sue? ..*OPP.*

4. Whether the petition is not maintainable as alleged? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim by its act and conduct as alleged? ..*OPR..*

6. Whether the petitioner has concealed the true and material facts from the Tribunal as alleged. If so, its effect? ..*OPR.*

7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Trilok Singh, who is the President of the union stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he feigned ignorance about the fact that CWP No.6265/2010 was instituted before the Hon'ble High Court of Himachal Pradesh, Shimla by the drivers, conductors and operational staff of the HRTC (Himachal Road Transport Corporation) wherein similar demands were raised. He does not know that the writ petition was decided by the Hon'ble High Court per order dated 04.10.2010, the copy of which is Ex. R1. He is not aware of the fact that the civil writ petition was ordered to be treated as a representation and the said representation was decided by the respondent No.1 vide order dated 20.1.2011, the copy of which is Ex. R2. He does not know that the copy of the order passed by the respondent No.1 was sent by the head office to all the depots of HRTC and they (petitioner/union) were parties to CWP No.6265/2010. He denied that the overtime is being paid to them as per the order Ex. R2 passed by the respondent No.1. He denied that in the meeting, which took place between the HRTC unions and the respondent No.1, it was agreed by the office bearers of the union(s) that the overtime will be payable to them as per the speed limit. The instant industrial dispute relates to the employees of Dehra depot only. He does not know that the employees of the other depots have not raised any such industrial dispute as they are satisfied with the order (Ex. R2), pronounced by the respondent No.1. He denied that he has instituted a phoney petition.

9. Conversely, Shri M.S. Rana, Regional Manager, HRTC, Dehra (respondent No.3) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that the order passed by the respondent No.1 was made applicable to all the depots of the HRTC. He (RW1) is not competent to decide the issue regarding the payment of overtime on speed limit basis. It is a policy matter to be decided by the Board of Directors of the HRTC. He admitted that the revised pay scales granted w.e.f. 01/1/2006 were made applicable to the employees of the HRTC from 01.9.2009 onwards. He also admitted that the payment of the overtime from 01.1.2006 to 31.12.2008 was made as per the old pay scales. Self stated, no order has been issued by the head office that the overtime should be paid to the employees as per the 5th pay commission revised pay scales granted from 01.1.2006.

10. Ex. PW1/B is the list of the conductors who are claiming balance amount of overtime allowance from June, 2009 to July, 2011.

11. Ex. PW1/C is the list of the drivers claiming balance amount of overtime allowance from June, 2009 to July, 2011.

12. Ex. PW1/D is the copy of a letter dated 29.8.2008 written by the respondent No.1 to all the unit officers in HRTC including the Regional Manager, Dehra (respondent No.3). The letter

indicates that it was decided that the duty hours shall be calculated as per the time table framed by the Regional Transport Officers (RTOs) for the purpose of allowing overtime allowance to the crew.

13. Ex. PW1/E is the copy of a letter dated 15th May, 2008 written by the respondent No.1 to the Deputy Divisional Manager, HRTC, Tara Devi, Shimla. Copies of this letter were forwarded to all unit officers. Vide this letter, it was clarified that as per the provision contained in Section 26(4) of the Motor Transport Workers Act, 1961, the overtime allowance is required to be calculated on the basis of basic wages + dearness allowance. The dearness pay is not to be taken into account until and unless the Act (ibid) is amended.

14. Ex. PW1/F is the copy of a letter dated 16.6.2009 written by the respondent No.2 to the respondent No.3 and others. It deals with the overtime allowances. The respondent No.3 etc. were advised to implement the head office instructions regarding calculation of the overtime as per time table framed/speed limit fixed by the concerned RTO.

15. Ex. PW1/G is the copy of a letter dated 24.11.2009 addressed by the respondent No.1 to all the heads of offices in HRTC including the respondent No.3. The letter depicts that the matter regarding payment of overtime allowance on the basis of average speed limit was discussed in the meeting of policy framing committee on 17.8.2009. The extract of the decision taken by the policy framing committee was forwarded to all concerned for compliance.

16. Ex. PW1/H is the copy of a letter dated 13th January, 2010 written by the respondent No.2 to the respondent No. 3 and others. In this letter, it has been mentioned that the meeting of policy framing committee was held on 16th December, 2009 in the head office. It has been decided to withdraw instructions issued to calculate the overtime hours as per the time table. The decision taken by the policy framing committee reads thus:

> "In order to standardize OTA payments on all routes by different Depots, it was decided to withdraw instructions issued to calculate the same as per time table and hence forth previous instructions issued to calculate OTA on the basis of prescribed speed limit shall prevail. All Divisional Managers shall compile the data on route wise OTA as per speed limit and send the same to head office by e-mail for compiling the same and standardizing the same route wise for whole of HRTC"

17. Ex. PW1/I is the copy of letter dated 14.10.2010 written by the respondent No.3 to the respondent No.1 regarding the industrial dispute in question.

18. From the demand notice dated 15.7.2010 served upon the respondent by the petitioner/union, it can be gathered that only one demand was raised by the petitioner/union. The demand related to the grant of overtime allowance as per the time table issued by the RTO and not on the basis of the speed limit fixed by the respondents. In the statement of claim/demand filed by the petitioner/union, another demand has been raised to the effect that the payment of the overtime allowance for the period 01.1.2009 to 31.8.2011 be made as per the revised pay scales which became effective from 01.1.2006 instead of the old pay scales which came into force on 01.1.1996. The demand(s) put forth by the petitioner/union beyond the terms of the reference cannot be looked into by this Court as per the mandate of Section 10(4) of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) 19. The evidence available on the record clarifies that similar demand(s) was/were raised by the HRTC drivers, conductors and operational staff union before the Hon'ble High Court of Himachal Pradesh in CWP No. 6265/2010. Such CWP was disposed of by the Hon'ble High Court per order/judgment dated 04.10.2010 (Ex.R1). The representation filed by the petitioner/union which was pending before the first respondent (MD, HRTC) was ordered to be

decided on merits in accordance with law within a period of three months from the date of a production of copy of the judgment alongwith a copy of writ petition by the petitioner before the Managing Director. In obedience to the directions issued by the Hon'ble High Court per judgment dated 04.10.2010, the matter was decided by the respondent No.1 per order dated 20.1.2011, the copy of which is Ex. R2. The respondent No.1 came to the conclusion that the criteria of speed limit alone can accurately determine the real running time of the transport vehicle based on actual running on the road, instead of the running time based on time table issued by the RTO, which may or may not be strictly adhered to due to a variety of circumstances. The speed limit criteria puts a check on over speeding, ensures passenger safety and has always been followed by the HRTC. Accordingly, the claim of the petitioner did not find favour with the respondent No.1 who rejected the representation dated 28.9.2010 (annexure P5). The order Ex. R2 was not assailed before any Court/Forum by the employees of the HRTC and became final. The copies of the order (Ex. R2) were sent to all the unit officers of the HRTC for information and guidance.

20. The evidence available on the file reveals that in-fact the basis on which the overtime allowances is to be calculated and paid to the operational staff of the HRTC is/was a policy decision to be taken by the respondent No.1 or the Board of Directors of the HRTC. HRTC is a Government organization. It is the basic law that the Courts cannot interfere in the policy decisions taken by the Government until and unless the same are opposed to public policy. As already mentioned the respondent No.1 while rejecting the representation per order dated 20.1.2011, the copy of which is Ex. R2, observed that the speed limit criteria puts a check on over speeding and ensures the safety of the passengers.

21. Such being the situation, I have no hesitation to conclude that the demands raised by the petitioner/union are unjustified. He/it is not entitled to any relief.

22. This issue is decided against the petitioner and in favour of the respondents.

ISSUES NO. 2 TO 4

23. Taking into account my findings on issue No.1, it is held that the petitioner has no cause of action or locus standi to sue. The claim petition is not maintainable.

24. These issues are also decided against the petitioner.

ISSUES NO. 5 AND 6

25. Not pressed.

RELIEF (ISSUE NO. 7)

26. As a sequel to my findings on the issues No.1 to 4 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 44/2011

Date of Institution : 03.5.2011

Date of Decision : 22.10.2013

The Secretary, Himachal Parivahan Mazdoor Sangh (BMS), Pathankot, Tehsil and District Pathankot, (Punjab). ..*Petitioner.*

Versus

4. The Regional Manager, H.R.T.C., Pathankot, Tehsil and District Pathankot (Punjab State).

5. The Managing Director, H.R.T.C., Shimla (H.P.). ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Thakur, Adv.

For the Respondents : Sh. Pradeep Dogra, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether demands raised by The Secretary, Himachal Parivahan Mazdoor Sangh (BMS), Pathankot, vide demand notice dated -02.1.2010 (Copy enclosed) before The Regional Manager, Himachal Road Transport Corporation, Pathankot, are legally maintainable and justified? If yes, to what service, monetary benefits & relief the drivers & Conductors are entitled to as per demand notice dated -02.1.2010? If not, what are its legal effects?"

2. The case of the petitioner/sangh (as set out in the statement of claim/demand) reads thus:-

"1. That the claimant/applicant is the Secretary of Himachal Parivahan Mazdoor Sangh (B.M.S.) Pathankot (Punjab State). The claimant was appointed as a Secretary on 22.10.2007 and again was appointed as Secretary on 25.10.2009. Hence, the applicant/claimant is fully competent to file the present claim petition, on behalf of the Sangh, on the following grounds:-

2. That the respondents No.1 and 2 are making their own order without any proper base and reason and they are trying to exploit the Sangh.

3. That the respondent No.2 has increased the speed limit of all the buses, vide order, dated 24.11.2009. The order passed by the respondent No.2 is baseless and against the interests of the Sangh. The orders so passed are also dangerous for the safety of the passengers also.

4. That the applicant/claimant wants to explain the increase of speed limit by giving following examples:-

a) That suppose a bus as per R.T.O. time table start to run from Pathankot at about 4.30 A.M. early in the morning to Pathankot, the time for arrival of the same bus at Baijnath, as per the R.T.O. time table, is 10 A.M. But due to vague order, dated 24.11.2009, passed by the respondent No.2, the speed limit of the bus is increased and the time will be for arrival at Baijnath is 9.45 A.M. instead of 10 A.M. Due to the increase of the speed limit the danger to the lives of the passengers and the employees has increased resultantly, because, Himachal Pradesh State is Hilly State and it has different Geographycal conditions. The roads are not in good conditions. At some time, due to land sliding and conjetion of roads, there causes disruption of roads. The increase of speed limit vide order, dated 24.11.2009 is against the the safety of the passengers and the employees as well as against the public interests. In some routes, the speed limit has increased upto two hours, vide order, dated 24.11.2009, which were passed by the respondent No.2.

b) That another example is the route from Pathankot to Manali. As per the R.T.O. time table, the departure time from Pathankot is 8 A.M. and it's time for arrival at Manali is fixed at 8.30 P.M. during evening. The time taken by the bus from Pathankot to Manali is 12.30 hours continuously and the same bus on the next day, starts running from Manali at 6 A.M. and it's time of arrival at Pathankot is 6.30 P.M. Now, the total duty hours from Pathankot to Manali and vise versa are 25 hours. But as per the order, dated 24.11.2009 which were passed by the respondent No.2, the total duty hours has been reduced from 25 hours to 22.49 hours.

c) That, now the next example on the speed limit is; suppose the bus starts from Pathankot to Sunder Nagar at 8.55 A.M. and it's arrival time at Sunder Nagar is fixed at 7 P.M. On the next day, the same bus starts from Sunder Nagar at 6.A.M. and it's arrival time at Pathankot is 3.30 P.M. The total time taken by the bus from Sunder Nagar to Pathankot and vice versa is 19.30 hours as per the R.T.O. time table. But due to the order, dated 24.11.2009 which was passed by the respondent No.2, the time of the bus has been decreased to 17.40 hours. (The copy of the order, dated 24.11.2009 passed by the respondent No.2 are enclosed herewith for kind perusal).

CLAIM ON WORK HOURS:-

5. That the respondent Nos. 1 and 2 are taking the duties of the workers as per the R.T.O. time table but in reality, both the respondents are counting the duty hours of the employees as per the order, dated 24.11.2009, which is illegal, unjustified, and against the safety of the passengers as well as the workers.

6. That the claimant/applicant wants to explain about the para No.1 above, about the claim on work hours in the following way:-

i) Suppose that if an employee gives his duty regularly for 12.30 hours, the respondents will count only 12 hours. This example is taken from the route from Pathankot to Manali and on the next same day the same bus will again

take 12.30 hours, but the respondents are counting the employees on duty only for 12 hours, as against 8 hours, as specified under section 13 of The Motors Transport Workers Act, 1961. Now, the total duty of the workers from Manali to Pathankot and Pathankot to Manali is 16 hours.

ii) That total duty from Pathankot to Manali and back comes to 25 hours, whereas as per R.T.O. time table the over-time from one side is 4.30 hours. But the department/respondents is taking over time for only 4 hours. So, the department is counting one hour less in over-time, instead of 25 hours. Now, as per orders, dated 24.11.2009 this time has been reduced by 49 hours. So, there is variation in order, dated 24.11.2009 as 22.49 hours. So, there is huge reduction of over-time as per the order, dated 24.11.2009. The said order, dated 24.11.2009 is against the public policy, illegal and unjustified. The above stated example of reduction of over time is explained from OTO. form dated 1.4.2009 (copy/enclosed).

iii) Next example is Pathankot to Sunder Nagar. The total duty hours from Sunder Nagar to Pathankot and vice versa are 19.30 hours. But the over time counted by the respondents is 3 hours instead of 3.30 hours. But as per the order, dated 24.11.2009 the total time from Pathankot to Sunder Nagar and vice versa is 17.40 hours. But the respondents are taking the duty of the workers as per the R.T.O. time table. Except above, there are so many other examples where the respondents are counting less duty, instead duty given by the workers.

6. That as per the Motor Transport Workers Act, 1961 the department/respondents has no right to take duty for more than eight hours and there shall be interval of nine hours when the worker goes on duty on the next day. But this is being not done in the interest of workers. It is pertinent to mention here further the above said Act envisages that if a worker works for more than eight hours in any day he shall be entitled to wages in respect of over time work at such rates as may be prescribed.

7. That during night hours duty, the respondents are not giving rest upto 9 hours as per the requirement of the Act. Suppose, a bus starts running at 8 P.M. from Pathankot and it's time for arrival at Manali is 8 A.M. The same bus again starts from Manali at 1.49 P.M. to Amritsar, therefore, the rest hours of the employees/workers from 8 A.M. to 1.49 P.M. comes to 5.49 hours. Whereas the respondents are conting the continuous duty and without any rest, whatsoever to the workers of the Transport.

RELIEF CLAIM:-

In view of the above claim petition, the claimant claims following reliefs :-

i) That duty hours of the workers may please be counted in accordance with the R.T.O. time table;

ii) The whole of the over-time be counted in favour of the claimant/workers instead of the reduction;

iii) Whole of the claim of the over-time be given to the workers of the Sangh and there shall not be any reduction in the salary/wages on the point of over-time;

iv) The order, dated 24.11.2009 may please be set aside.

v) The wages may please be given to the workers from June, 2009 regularly as per the 6th Pay Commission and the order of reduction of wages i.e. O.T.A. from June, 2009 of Regional Manager, H.R.T.C. Pathankot, may please be set aside as per the order, dated 24.11.2009.

vi) Any other claim as this Hon'ble court may deem expedient and fit may also be given to the claimant/workers. It is, therefore, respectfully prayed that the present petition be kindly be allowed and reliefs be given, in the interest of justice and fair play".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The same is wholly misconceived, groundless, baseless and flagrant abuse of process of law. The petition has been preferred to harass and blackmail them (respondents) as well as derive undue advantages. The petitioner has no cause of action and locus standi to sue. He (petitioner) is estopped from filing the claim petition by his act, conduct and acquiescence. The claim petition is frivolous and vexatious. The petitioner has concealed the true and material facts. The petitioner has not approached the Court/Tribunal with clean hands.

On merits, it has been owned that the Sangh is recognized by the Registrar of Trade Unions as well as a demand notice dated 02.1.2010 was issued by the petitioner/sangh. However, it has been pleaded that the petitioner/sangh had instituted a civil writ petition on the same grounds and the same cause of action before the Hon'ble High Court of Himachal Pradesh, Shimla. Such civil writ petition was argued at length. The Hon'ble High Court reached the conclusion that the matter in dispute can be decided by the committee. The civil writ petition was treated as a representation and the Managing Director (respondent No.2) was directed to decide the same within three months. The parties were called by the respondent No.2. An order in accordance with the provisions of law was passed by the Managing Director (respondent No.1). The copies of the order were sent to all the Sub Divisions and depots of the HRTC (Himachal Road Transport Corporation). All depots and the Sub Divisions are following the orders pronounced by the respondent No.2. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be dismissed with special costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that he/it petitioner/sangh never filed any writ petition on similar grounds before the Hon'ble High Court of Himachal Pradesh. He (petitioner) was never called by the respondent No.2 before passing any order. The respondents are continuously exploiting the members of the union.

5. Per order dated 27.2.2012, following issues were struck:

1. Whether the demands raised by the Secretary, Himachal Parivahan Mazdoor Sangh (BMS), Pathankot, vide demand notice dated 02.1.2010 are legally maintainable and justified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action? ..*OPP.*

3. Whether the petitioner has the locus-standi to sue? ..*OPP.*

4. Whether the petition is not maintainable, as alleged? ..*OPR.*

5. Whether the petitioner is estopped from filing the claim by its act and conduct as alleged? ..*OPR.*

6. Whether the petitioner has concealed the true and material facts from the Tribunal as alleged. If so, its effect? ..*OPR.*

7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Ashok Kumar Sharma, who is the Secretary of the Mazdoor Sangh, stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that they had instituted CWP No.6265/2010 before the Hon'ble High Court of Himachal Pradesh which was disposed of vide judgment dated 04.10.2010, the copy of which is Ex. R1. He denied that after the decision of the writ petition the matter was decided by the Managing Director (respondent No.2) on 20.1.2011 and the copy of the order passed by the respondent No.2 is Ex. R2. The order passed by the respondent No.2 was not assailed before the Hon'ble High Court by instituting the writ petition. He admitted that the decision regarding payment of the overtime allowance is taken by the Board of Directors of the HRTC (Himachal Road Transport Corporation). He also admitted that none of the employees received the payment of the overtime allowance uptil date under protest. He denied that the overtime is paid on the basis of speed limit so that the drivers do not drive the buses fast and the mishaps are averted. He denied that in the meeting which took place between the office bearers of HRTC unions and the respondent No.2, it was agreed that the overtime shall be paid on the basis of speed limit. The unions are there in all the depots of HRTC. He (petitioner) represents only Pathankot depot. There are 23 depots of the HRTC in Himachal. The employees of the other depots are being paid the overtime allowance on speed limit basis. He feigned ignorance about the fact that no such demand has been raised by the employees of the other depots. He refuted that he has instituted a phoney petition.

9. Conversely, Shri Subhash Kumar, Regional Manager, HRTC, Pathankot (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the overtime is paid to the drivers and conductors on the basis of the speed limit. He denied that he has given a wrong statement.

10. Ex. PW1/B is the copy of the letter dated 24.11.2009 written by the respondent No.2 to all the heads of offices in the HRTC including the respondent No.1. The letter deals with the payment of overtime allowance on the basis of average speed limit. In this letter, it has been mentioned that the matter was discussed in the policy framing committee on 17.8.2009. The extract of the decision taken by the policy framing committee reads thus:-

> "It was decided that status quo in this behalf be maintained. However, OTA payment in units under Dharamsala Division has increased fourfold for which report from DM, Dharamsala be obtained and corrective measures be taken accordingly. Further it was decided that TMPAs/Drivers on contract be deployed on long route buses".

11. Ex. PW1/C is the copy of a letter dated 29.1.2010 written by the respondent No.1 to the Adda Incharge of HRTC, Pathankot and Jassur. It deals with revised overtime of routes as per speed limit.

12. Ex. PW1/D is the copy of a letter dated 29.8.2008 written by the respondent No.2 to all the unit officers in HRTC including the Regional Manager, Pathankot (respondent No.1). The letter indicates that it was decided that the duty hours shall be calculated as per the time table framed by the Regional Transport Officers (RTOs) for the purpose of allowing overtime allowance to the crew.

13. Ex. PW1/E is the detail of revised overtime hours worked out as per head office memo dated 24.11.2009 by the respondent No.1.

14. Exts. PW1/F and G are the copies of the duty card overtime/night allowance form pertaining to conductor Shri Bhola Ram, a member of the petitioner Sangh.

15. Exts. PW1/H1 to H9 are the details of the overtime allowance allegedly due in favour of the members of the petitioner Sangh calculated by the latter.

16. Browsing of the demand notice dated 02.1.2010 served upon the respondents by the petitioner unfolds that the below given three demands were raised by the petitioner/union:-

a) The payment of overtime allowance be made as per the RTO time table and not on speed limit basis fixed by the respondents.

b) The discrepancies are there in the streams of the drivers and conductors constituted by the respondents because of which there is unrest amongst the employees.

c) Jack and wheel pana etc. are normally not there in the buses of the HRTC because of which the crew faces the hardship as and when any tyre gets punctured.

17. The statement of claim/demand filed by the petitioner/Sangh shows that he/it has confined its claim to only the demand No.1. No pleadings are there to support the demands No. 2 and 3 as contained in the notice dated 02.1.2010. In addition to demand No.1, certain other

demands (not detailed in the demand notice) have been put forth by the petitioner/Sangh. As per the mandate of Section 10(4) of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short), this Court/Tribunal cannot go beyond the terms of the reference as well as decide the legality and validity of the demands raised by the petitioner/Sangh over and above the demands highlighted in the demand notice dated 02.1.2010.

18. The evidence available on the record clarifies that similar demand(s) was/were raised by the HRTC drivers, conductors and operational staff union before the Hon'ble High Court of Himachal Pradesh in CWP No. 6265/2010. Such CWP was disposed of by the Hon'ble High Court per order/judgment dated 04.10.2010 (Ex.R1). The representation filed by the petitioner/union which was pending before the first respondent (MD, HRTC) was ordered to be decided on merits in accordance with law within a period of three months from the date of production of a copy of the judgment alongwith a copy of writ petition by the petitioner before the Managing Director. In obedience to the directions issued by the Hon'ble High Court per judgment dated 04.10.2010, the matter was decided by the respondent No.2 per order dated 20.1.2011, the copy of which is Ex. R2. The respondent No.2 came to the conclusion that the criteria of speed limit alone can accurately determine the real running time of the transport vehicle based on actual running on the road, instead of the running time based on time table issued by the RTO, which may or may not be strictly adhered to due to a variety of circumstances. The speed limit criteria puts a check on over speeding, ensures passenger safety and has always been followed by the HRTC. Accordingly, the claim of the petitioner did not find favour with the respondent No.2 who rejected the representation dated 28.9.2010 (annexure P5). The order Ex. R2 was not assailed before any Court/Forum by the employees of the HRTC and became final. The copies of the order (Ex. R2) were sent to all the unit officers of the HRTC for information and guidance.

19. The evidence available on the file reveals that in-fact the basis on which the overtime allowance is to be calculated and paid to the operational staff of the HRTC is/was a policy decision to be taken by the respondent No.2 or the Board of Directors of the HRTC. HRTC is a Government organization. It is the basic law that the Courts cannot interfere in the policy decisions taken by the Government until and unless the same are opposed to public policy. As already mentioned the respondent No.2 while rejecting the representation per order dated 20.1.2011, the copy of which is Ex. R2, observed that the speed limit criteria puts a check on over speeding and ensures the safety of the passengers.

20. Such being the situation, I have no hesitation to conclude that the demands raised by the petitioner/union are unjustified. He/it is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of the respondents.

ISSUES NO. 2 TO 4

22. Taking into account my findings on issue No.1, it is held that the petitioner has no cause of action or locus standi to sue. The claim petition is not maintainable.

23. These issues are also decided against the petitioner.

ISSUES NO. 5 AND 6

24. Not pressed.

RELIEF (ISSUE NO. 7)

25. As a sequel to my findings on the issues No.1 to 4 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 297/2012

Date of Institution : 09.4.2012

Date of Decision : 22.10.2013

Shri Ambika Singh s/o Shri Mohar Singh, r/o Village Lahal, P.O. Khanni, Tehsil Bharmour, District Chamba, H.P. ..*Petitioner.*

Versus

1. The State of H.P. through the Secretary, Rural Development Department, Govt. of H.P., Shimla.

2. The Director, Rural Development Department, Govt. of H.P. Shimla.

3. The S.D.M. Bharmour, District Chamba, H.P.

4. The B.D.O. Bharmour, District Chamba, H.P.

5. Shri Ashok Kumar s/o Shri Bidhia Ram, r/o Village Dhakog, P.O. Durgethi, Tehsil Bharmour, District Chamba, H.P. at present working as driver on contract basis, office of the B.D.O. Bharmour, District Chamba, H.P. ..*Respondents.*

Direct Claim Petition/Reference under Section 2-A of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.C. Rana, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

This is a direct claim petition preferred by the claimant/petitioner/workman under Section 2-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as amended up-to date.

2. Here I will like to mention that a reference/notification regarding the present industrial dispute was also issued by the appropriate Govt. in the month of July, 2012. Such reference was registered as Reference No.300/2012 and disposed of on 31.8.2012. The final order dated 31.8.2012 passed by this Court is reproduced below verbatim for ready reference:-

"31-08-2012 Present: Petitioner with Sh. T.C. Rana, Adv.

Sh. Manish Sharma, B.D.O. Bharmour (respondent) with Sh. Sanjeev Katoch, Dy. D.A.

Ld. csl. for the petitioner has made the below given statement in the Court:-

"Since my client has already filed a direct claim petition Under Section 2-A of the Act, which has already been registered as a Reference, my client does not want to proceed with the instant Reference which has been received from the appropriate Government. It be dismissed as withdrawn and tagged with the connected matter".

2. Ordered accordingly. Parties to bear their own costs.

3. A copy of this order/Award be sent to the appropriate Government for further necessary action as its end.

4. Be tagged with the connected matter.

Announced: Sd/-31.8.2102
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P."

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3. The case of the petitioner (as set out in the prolix statement of claim/demand) reads thus:

"1. That the petitioner has already served his demand notice dated 18-12-2010, a copy of which was also directly delivered on the same date to the Labour-Cum-Conciliation Officer Chamba, for necessary action. The said Industrial Dispute had been registered by the Labour-cum-Conciliation Officer Chamba. During the conciliation proceedings, the respondents (State Govt.) have filed their reply of the demand notice before the Labour Officer Chamba. The matter has still been lying pending before the learned Labour Commissioner, Govt. of H.P. Shimla, for making the reference to this Hon'ble Tribunal/Court.

2. That as per the amended provisions of Section 2-A of the Industrial Disputes Act, 1947, it has been clearly laid down and provided that in case the industrial dispute raised in the demand notice is not referred within 45 days from the receipt of the demand notice, to the Industrial Tribunal or Labour Court, for adjudication, the workman/employee concerned is entitled to approach this Hon'ble Tribunal/Court directly for redressal of his grievances. In the present case the petitioner had raised the industrial dispute vide his demand notice dated 18-12-2010, but the said industrial dispute has not yet been referred to this Hon'ble Court for adjudication by the appropriate Govt. and thus the petitioner wants to raise his dispute directly before this Hon'ble Tribunal/Court in the interest of justice. Photo copy of the demand notice aforesaid is filed as Annexure P-8.

3. That the petitioner submits the brief facts of the case as under:-

(i) That the petitioner was engaged by Respondent No.4 as Supervisor on daily waged basis on muster-roll w.e.f. February, 2007, in the Development Block Bharmour, in District Chamba, at the sanctioned daily rates of wages and he continued working as such till April 2008, with minimum period of 180 days of service in each calendar year.

(ii) That though the petitioner was engaged as Supervisor by Respondent No.4 but he was made to work as Driver of the office of Respondent No.4 from the very day of his engagement as Supervisor, and said action of the respondents clearly hit the principle of equal pay for equal work and amounts to unfair labour practice.

(iii) That during the course of his said daily waged service, the Respondent No.4, realized his mistake and issued muster-roll of a Driver from the month of July, 2008, and also started paying the wages of a Driver, which was higher than that of the wages of a Supervisor, used to be paid to the petitioner.

(iv) That the petitioner remained performing his daily waged service/duties under the Respondents, to the best of his ability and had never given any chance of any complaint against his work and conduct. The petitioner has been holding a valid Driving Licence since the year 1996 and thus had acquired sufficient knowledge in the matter driving of Vehicles as well as repairing the same at times when needed to be so done. The petitioner has got record pertaining to his daily waged service under the right to information Act, a photo copy of which is filed herewith as Annexure P-1.

(v) That the Respondent No.4 in the meantime issued instructions to all the Block Development Officers in the State to initiate the process of filling up the post of Drivers in Rural Development Department on contract basis in the year 2008 and subsequently issued some modification to the said instructions in the month of December, 2008, vide letter dated 4-12-2008, directing the Block Development Officers, of Sulah, District Kangra, Bilaspur Saddar, District Bilaspur, Mehla District Chamba, Haroli District Una, Mashobra District Shimla, Theog District Shimla, Dehra District Kangra, Chopal District Shimla and Karsog District Mandi, to not carry out the exercise of recruitment of Drivers on Contract basis and to allow the daily waged drivers to continue working as Drivers in the said Blocks as before. Though the petitioner had also been working on daily waged basis as Driver during the said period at development Block Bharmour, District Chamba, but the said modified instructions were arbitrarily not made applicable to the said Block due to political grounds as the local MLA of the area was interested in getting employed Respondent No.5 by hook or crook in place of the petitioner. A photo copy of the said instructions of the respondent No.2 is filed herewith as Annexure P-2.

(vi) That when the petitioner learnt about the move of the respondent for initiating the process of recruitment of Driver in Development Block Bharmour, Distt. Chamba, on contract basis and he submitted his representation to Respondent No.2 through proper Channel, dated 17-01-2009, which was forwarded by the Block Development Officer, Barmour, with his letter No.1300, dated 19-06-2009, with the recommendation that the case of the petitioner may be considered on sympathetic grounds for his appointment in the light of other similar cases. A Photo copy of each of the said letter and representation is filed herewith as Annexure P-3 and P-4 respectively.

(vii) That without taking any decision on the said recommendations of the Block Development Officer, Bharmour, the process for recruitment of a Driver on contract basis

was permitted to continue for Development Block Bharmour and accordingly an interview for recruitment of Driver on contract basis was fixed for 19-11-2010 through the employment Ex-change, and the petitioner was also asked to join the said process and the petitioner accordingly acted on the advice of Respondent No.4. The interview was conducted by a Committee headed by S.D.M. Bharmour as Chairman, with B.D.O. Bharmour as its Member Secretary and an official of the Transport Department from Chamba. Four persons, including the petitioner, were called for the said interview, out of whom two persons namely, Sh. Kamlesh Kumar and Pawan Kumar did not appear and only the petitioner and Ashok Kumar, respondent No.5, appeared in the said interview. The petitioner fulfilled all the requisite qualifications and experience for the post of Driver but the said Selection Committee headed by Respondent No.3 arbitrarily acted in the selection process at the instance of the local MLA and proceeded to award 30 Marks to the petitioner for Driving Test but wrongly awarded 38 marks for the same to Respondent No.5, and declared him selected for appointment as Driver on contract basis vice Petitioner. A photo copy the Details of Interview marks is filed herewith as Annexure P-5. The respondent No.5 was accordingly appointed as Driver on contract basis vide letter No.2771, dated 25-11-2010 and he was permitted to join his duties by Respondent No.4. The respondent No.4, however, after doing so, also intimated to Respondent No.2 vide his Office letter dated 14-12-2010, and sought advice regarding claim of the petitioner being a daily waged employee, photo copy of said letter as well as the appointment letter dated 22-11-10 is filed herewith as Annexure P-6 and P-7.

(viii) That the Respondent State has discriminated the petitioner in the matter of his continuation as a daily waged Driver in the Office of Respondent No.4 *vis-à-vis* the similarly situated daily waged employee of the department, who have been permitted to continue working in the same status whereas the petitioner has been subjected to face an interview for appointment as a Driver on contract basis. In the process aforesaid, persons junior to the petitioner as daily waged drivers have been retained in service but the petitioner has been ousted from daily waged service most illegally, unconstitutionally and arbitrarily, which act of the State Govt/Respondents render the retrenchment of the petitioner a vitiated and not maintainable in the eyes of law.

(ix) That even for argument sake, in case the petitioner was not adjudged meritorious as a result of the interview conducted under the Chairmanship of Respondent No.3, for selection of Driver on contract basis, the petitioner was entitled to have been permitted to continue working as a Supervisor on daily waged basis for which he was initially recruited by Respondent No.4, on daily waged basis, but the same has also not been permitted in flagrant misuse of powers in utter breach of the provisions of section 25-G and 25-F of the Industrial Disputes Act and the action of the respondents, as such, is not sustainable in the eyes of law.

(x) That the termination of services of the petitioner is bad in law in as much as he has been treated unfairly in the matter of his daily waged employment and persons similarly situated even junior to the petitioner have been retained in the department. Further, while retrenching the petitioner from daily waged service, the respondents have not followed the law and his claim even on the lower post of Supervisor on daily waged basis has been ignored for reasons best known to the respondents.

(xi) That the selection and appointment of Respondent No.5 as Driver on contract basis is unconstitutional, illegal, arbitrary, politically motivated and is violative of Articles 14, 16 and 21 of the Constitution of India.

(xii) That the petitioner remained in employment of the Respondent State as a daily waged workman/employee from February 2007 till November 2010, with minimum 180 days of

service in each calendar year and termination of his services/retrenchment from service without compliance of provisions of Section 25-F of the Industrial Tribunal Act, which are mandatory perse, render the termination/retrenchment as vitiated. The respondent department have retained the persons junior to the petitioner in service whereas the petitioner has been disengaged from service, in complete violation of the provisions of Section 25-G of the Industrial Dispute Act and as such the said action of the respondents is not sustainable in the eyes of law.

(xiii) That termination of services of a daily waged workman without payment of retrenchment compensation is illegal and, as such the petitioner is entitled to be re-instated in service with continuity of service and back wages.

(xiv) That it is stated that after termination of services of the petitioner, the petitioner is still unemployed and has not been gainfully employed anywhere and the payment of back wages on the said ground is legally justified. That the petitioner, in view of the above said submissions, prays the Hon'ble Court for grant of the following reliefs in favour of the petitioner:-

(a) That the selection and appointment of Respondent No.5 as Driver on contract basis in place of the daily waged employee (petitioner) may be declared unconstitutional, illegal, arbitrary, discriminatory, politically motivated, null and void and be quashed accordingly and the petitioner may be declared to be in service on daily waged basis or on contract basis, as the case may be;

(b) That in case the Hon'ble Court comes to the conclusion that the selection and appointment of Respondent No.5 as Driver on Contract basis is unfair and suffers from vice, the petitioner may be declared selected as Driver on contract basis retrospectively and be held entitled back wages and continuity in service;

(c) That in case the Hon'ble Court finds that the process adopted by the respondents in connection with selection and appointment of Respondent No.5 was legally valid, the Hon'ble Court may declare the termination of services of the petitioner as vitiated for noncompliance of provisions of Section 25-F and 25-G of the Industrial Disputes Act and accordingly hold the petitioner to be re-instated in service with continuity in service and back wages.

(d) That the Hon'ble Court may further direct the respondent to regularise the services of the petitioner on the basis of the Policy framed by the Respondent State on the basis of his seniority.

(e) That the Hon'ble Court may kindly direct the respondent State to pay the arrears of pay resulting from the re-instatement of the petitioner in service alongwith interest at the rate of 12% per annum from the date due till the actual date of payment thereof.

(f) That the respondents may be directed to pay the wages of the petitioner as that of the Driver instead of the Supervisor w.e.f. February 2007 to April 2008, during which period the petitioner remained performing the duties of a Driver but has been paid the wages of a Supervisor most illegally in violation of the well settled law of "equal pay for equal work" and as a consequences thereof the difference pay resulting therefrom be ordered to be released to the petitioner alongwith interest at the rate of 12 % per annum from the date/s due till the actual date of payment thereof.

(g) That any other relief which this Hon'ble Tribunal/Court may find fit in the facts and circumstances of the case may also be granted in favour of petitioner and against the

respondents in the interest of justice, equity and fairplay. It is, therefore, prayed that the petition may be allowed by granting the reliefs claimed in favour of the petitioner and against the respondents with costs. The petitioner may also please be granted adequate amount of compensation for harassment and mental agoney meted out by him at the instance of respondents".

4. On notice, the respondents appeared. Respondents No. 1 to 4 filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner has no enforceable cause of action. The claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has misrepresented himself. He has approached the Court by concealing the material facts. The claim petition is bad on account of delay and laches on the part of the petitioner. He is estopped from filing the petition by his act and conduct.

On merits, paras 1 to 3 (xiv) read as under:-

"1&2. That para No. 1 & 2 of the claim petition needs no reply being matters of conciliation proceedings, as well as amended provisions of the Industrial Dispute Act 1947.

3(i) That the contents of para 3 (I) are admitted to the extent of engagement of petitioner as supervisor w.e.f. 2/2007 by the respondent No.4. It is however submitted that the petitioner was a contingent paid worker/supervisor and continued to serve under the respondent no.4 on account of contingencies of different Schemes/Heads from time to time. The detailed of which is being mentioned in the mandays of the petitioner as Annexure-R-1.

3(ii) That the contents of this para are wrong and hence denied. It is however submitted that the post of the driver of the office of the respondent no.4 was lying vacant w.e.f. 11/2003 and for the supervision of works and officials tours by the respondent no. 4, the official vehicle of the office of the respondent no.4 was being plied by making local arrangements. Since the petitioner Ambika Singh is a valid driving licence holder to drive a L.M.V./LTV. Is services were also requisitioned to ply the official vehicle on the need basis by the respondent no.4

3(iii) That the contents of this para 3 (iii) are wrong and hence denied. However it is submitted that keeping in view the nonavailability of the regular driver, it was decided to change the category of the petitioner from supervisor to driver w.e.f. 01/07/2008 as contingent paid against the contingency vide which he was continuing earlier. It is further submitted that no objection/protest was raised by the petitioner at such change of category from supervisor to driver.

3(iv) In reply to the contents of this para, it is submitted that a detailed reply as already being given in para's supra. Hence needs no reply.

3(v) That the contents of this para 3 (v) of the claim petition are wrong and hence denied. It is however submitted that vide section no. RDD-II-B(15)21/84-loose-2222-39 dated 23/09/2008 that respondent no.2 sanction the post of driver on contract basis to be filled under the recruitment and promotion rules 2006. Copy of sanction and rules is being attached with Annexure R-2 and R-3. Accordingly the Deputy Commissioner Chamba vide Letter No. DRDA/CBA-1677-80 dated 3/07/2009 constituted a selection committee. Copy of letter is being attached with Annexure-R-4. To fill up the required vacancy the requisition of name of suitable candidate was sought from the Employment Exchange. Which amongst the other names has also sponsored the name of the petitioner. In addition

to above vide application dated 17/01/2009 the petitioner has also applied directly for the post of driver with the respondent no.4. Copy of the application is being attached with Annexure R-5. Further for the purpose of selection four candidates were called including petitioner and respondent no.5 by selection committee. However only petitioner and respondent no.5 appeared before the selection committee comprising of ADM. Bharmour, respondent no.4 and a technical member from HRTC. However in the overall merit the respondent no.5 surpassed the petitioner as he had lacked behind in driving test. The result sheets are being attached here with Annexure R-6. Thus in accordance with the recommendation of selection committee the appointment for the post of the driver in the office of the respondent no.4 was offered to the respondent no.5. Who in pursuance of the offer has joined services w.e.f. 25/11/2010. Therefore with the joining of a regular driver, the services of the petitioner being a contingent paid could not be continued. More over with the participation in selection process the petitioner is precluded from challenging the entire process after the conclusion of same and not finding merit with the selection committee. It is pertinent to mention there that instructions of 2008 which are being relied upon by the petitioner in this para do not pertain with office of the respondent no.4. Moreover the status of the petition was also that of contingent paid copy of the letter no.RDD-II-B(15)21/84-loose-687-695 dated 04/12/2008 is being attached here with as Annexure–R-7.

3(vi) That the contents of the para no. 3 (vi) are admitted to the extent of representation of the petitioner 19/06/2009, rest of the contents of this para are wrong and hence denied. The petitioner being contingent paid could not have been continued against a regular post to be filled under the Requirement and Promotion Rules.

3(vii) That the contents of the para no.3 (vii) are wrong and hence denied. A detailed reply has been given in para's above. The selection of the respondent no.5 is purely on merits without there being any malafied or bias on the part of the members of the selection committee against the petitioner, as being alleged in this para. It is further clarified that letter no.3362 dated 14/12/2010 was written to respondent no.2 by the respondent no.4 for seeking of guidance when the petitioner has raised present industrial dispute. A copy of letter is being attached as Annexure-R-8.

3(viii) That the contents of the para no. 3(viii) are wrong and hence denied. A detailed reply has already being given in para's above. Further with selection of the driver under the due process of Recruitment and Promotion Rules, no work of driver available for the petitioner, a condition precedent to the engagement of the petitioner as a contingent paid driver.

3(ix) That the contents of this para are also wrong and hence denied. It is however submitted that, with the change of category of the petitioner from that of a contingent paid supervisor to the contingent paid driver, no post of contingent paid supervisor now exists with respondent no.4. Moreover the change of category is with the implied consent of the petitioner as no objection whatsoever was raised by him for such change of category at the relevant time. Thus with selection of driver under the due process of rules in which the petitioner had also participated the replying respondent had not violated any of the provisions of the Industrial Disputes Act 1947 and petitioner being a contingent paid changeable to a particular scheme, in-turn is not entitled for any of the protections of above Act, particularly when at the time of his initial engagement duly apprised that being a contingent paid his continuity in service shall depend on the availability of funds/scheme.

3(x) That the contents of the para are wrong and hence denied. As has been discussed above the disengagement of the petitioner is on account of a condition precedent to his

engagement. Further after the disengagement the replying respondent had neither retained or not re-engaged any of the juniors of the petitioner. The petitioner was the sole contingent paid in any of the categories working under the respondent no.4.

3(xi) That the contents of the para are wrong and hence denied. The petitioner being a stop-gap arrangement, charged under the available contingencies available with the respondent no.4 could not have continued on a regular post to be filled under the Recruitment and Promotion Rules. Further the petitioner being one of the participants to the selection procedure is estoppled from challenging the same. The selection of the respondent no.5 is purely on merit as per prescribed criteria.

3(xii)The contents of para no. 3(xii) are wrong and hence denied. The fact that contingency of petitioner was dependent on the availability of funds/contingency is also evident from the fact that due to the non availability of funds the work could not be provided to the petitioner in the month of November & December 2007 and March & May, 2008. Thus being a contingent paid the petitioner was not entitled for any of the protections as is being claimed by him in this para of claim petition.

3(xiii) The contents of para no. 3(xiii) are wrong and hence denied. A detailed reply has been already given in para's above. In view of selection of respondent no.5 on merits, no work is available for the petitioner with the respondent no.4

3(xiv) The contents of this para are wrong and hence denied. The petitioner is gainfully employed and is working privately. Further he is also carrying out the profession of agriculturalist for his livelihood".

In these circumstances, the answering respondents No.1 to 4 pray that the petition in hand being meritless be dismissed.

5. Reply preferred by the respondents No. 1 to 4 has been adopted by the respondent No.5 (Shri Ashok Kumar).

6. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that the departmental selection committee constituted by the Deputy Commissioner, Chamba acted on the tips of the local MLA. His (petitioner's) merit was ignored. The selection committee for practical test was not properly constituted.

7. Per order dated 19.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 25-11-2010 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the petitioner is entitled to the wages as claimed? ..*OPP.*

3. Whether the petitioner has a cause of action? ..*OPP.*

4. Whether the petition is not maintainable in the present form? ..*OPR.*

5. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR.*

6. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

7. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..*OPR.*

8. Relief.

8. I have heard the ld. counsel/AR for the parties and have gone through the case file.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : No

Issue No. 7 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 4 AND 7

10. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

11. The petitioner Shri Ambika Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged in the month of February, 2007 by the respondents and he worked as a contingent paid supervisor in different schemes of the block as detailed in Ex. PW1/B (mandays chart). He admitted that from the month of November 2003, the post of driver in Bharmour block was lying vacant and the vehicle was there in the block. He denied that as and when the vehicle was required to be plied for the official purposes, a local driver used to be arranged. Self stated, he (PW1) used to drive the vehicle. From the year 2003 to 2007, no BDO was posted at Bharmour. The work of the BDO was looked after by SDM Bharmour. From the year 2003 to January, 2007 the driver of the SDM drove the vehicle of the BDO as the SDM was not having the vehicle. When he (PW1) joined the service he was having the licence to drive a motor vehicle. He admitted that in the month of July, 2008 on the basis of his experience, the muster roll of the driver (instead of supervisor) was issued in his name. He also admitted that after the issuance of the muster roll of the driver, payment as contingent paid driver was made to him under different schemes of the block. When the muster roll from supervisor to driver was changed, he did not raise any objection. He admitted that up-to November, 2010, he served as a contingent paid driver and the post of the driver falls in class-III category. He admitted that now as per rules the drivers are being employed in Rural Development Department on contract

basis after an interview. He even admitted that in the year 2009, recruitment process was started in Bharmour block for appointment of the driver as the post was lying vacant. He feigned ignorance about the fact that a selection committee was constituted by the Deputy Commissioner, Chamba for the said purpose. He admitted that he (PW1) and three other persons had applied for the post of the driver. He appeared before the selection committee and underwent the driving test. Marks for the experience were awarded to him by the selection committee. He denied that Shri Ashok Kumar (respondent No.5) scored more marks than him because of which he (Shri Ashok Kumar) was selected against the post of the driver and appointed as such. No case was instituted by him (PW1) for stopping the selection process. He denied that the selection process was stalled only in those blocks where the posts of the regular drivers were lying vacant and the vehicles were being driven by the daily waged drivers. He also denied that the respondent No.5 was selected and appointed as per the rules without any pressure. He admitted that only one vehicle is there in Bharmour block. He denied that after the employment of the respondent No.5, no work as a driver is available for him (PW1) in Bharmour block. He admitted that after the disengagement of his services, no contingent paid supervisor or driver has been employed by the respondents in Bharmour block. He refuted that when his services were engaged, it was conveyed to him that he has been employed as a contingent paid worker and is not entitled to the regularization. Further, he denied that he has instituted a phoney petition to grab the Government job.

12. Conversely, Dr. Jitender Kanwar, Sub Divisional Magistrate, Bharmour (respondent No.3), who is holding the additional charge of the post of the Block Development Officer, Bharmour (respondent No.4), testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that per letter Ex. RW1/I, the Director issued the instructions to the effect that in the nine blocks daily waged drivers, who are working will continue to ply the vehicles. Self stated, the petitioner was a contingent paid driver/employee. He denied that the services of the petitioner were terminated in an unlawful manner.

13. RW2 is Shri Ashok Kumar (respondent No.5). Ex. RW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC. He supported the version of the respondents.

In the cross-examination, he deposed that in the year 2010, Shri Tulsi Ram was their MLA. Shri Tulsi Ram remained the Speaker of Himachal Pradesh Vidhan Sabha. He denied that he got the employment on the recommendations made by Shri Tulsi Ram.

14. Ex. PW1/B (corresponding to Ex. RW1/B) is the copy of a letter written by the respondent No.4. Vide this letter, the information sought by the petitioner under the Right to Information Act, 2005 was supplied to him. The letter indicates different schemes/heads under which the petitioner served initially as a supervisor and, thereafter, as a driver on contingent paid basis.

15. Ex. PW1/C (corresponding to Ex. RW1/I) is the copy of a letter written in the year 2008 by the Director, Rural Development, Himachal Pradesh, Shimla (respondent No.2) to various Block Development Officers. Vide this letter, it was directed that in the blocks where daily waged drivers are working, it is not advisable to carry out the recruitment of drivers on contract basis. Such daily waged drivers working in nine blocks were allowed to continue working.

16. Exts. PW1/D and RW1/G are the copies of a letter dated 19.6.2009 written by the Block Development Officer, Bharmour (respondent No.4) to the Director, Rural Development (respondent No.2). As per this letter the application dated 17.1.2009 Ex. PW1/E submitted by the

petitioner for his employment as a driver on daily wages was forwarded by the respondent No.4 to the respondent No.2.

17. Ex. PW1/F (corresponding to Ex. RW1/H) is the copy of the proceedings of selection committee which was constituted by the Deputy Commissioner, Chamba for the post of the driver (on contract basis) in Development Block, Bharmour. The proceedings held on 19.11.2010 by the committee indicate that four persons (including the petitioner and the respondent No.5) had applied for the post of the driver. The petitioner and the respondent No.5 appeared before the selection committee and underwent the selection process. They also took the driving test. The respondent No.5 was selected as he scored more marks than the petitioner.

18. Ex. PW1/G is the copy of the appointment letter dated 22.11.2010 issued by the respondent No.4 in favour of the respondent No.5. The latter was appointed after the selection being more meritorious than the petitioner.

19. Ex. PW1/H (corresponding to Mark-A) is the copy of a letter dated 14.12.2010 addressed by the respondent No.4 to the respondent No.2. Vide this letter, the application (Ex. PW1/I) of the petitioner for re-employment was forwarded to the respondent No.2 by the respondent No.4.

20. Exts. PA and PB are the letters written by the respondents to the petitioner. The information sought by the petitioner by taking recourse to the provisions of Right to Information Act was supplied to him by the department.

21. Ex. RW1/C is the copy of a letter dated 22/23 September, 2008 written by the respondent No.2 to the various Block Development Officers including Block Development Officer, Bharmour. The letter deals with the filling up of the posts of drivers on contract basis.

22. Ex. RW1/D is the copy of a notification dated 09.10.2007 issued by the Rural Development Department, Government of Himachal Pradesh. Vide this notification, the Himachal Pradesh Rural Development Department, Driver Class-III (Non-Gazetted) Recruitment and Promotions Rules, 2006 notified on 19.10.2006 were amended.

23. Ex. RW1/E is the copy of the notification dated 19.10.2006 issued by the Rural Development Department, Government of Himachal Pradesh. The recruitment and promotion rules for the posts of Drivers Class-III (Non-Gazetted) were notified.

24. Ex. RW1/F is the copy of an office order dated 03.7.2009 issued by the Deputy Commissioner-cum-Chief Executive Officer, District Rural Development Agency, Chamba. It clarifies that in obedience to the directions issued by the respondent No.2, a committee was constituted for the employment of a driver on contract basis in the office of the respondent No.4.

25. It is not the case of the petitioner that his service conditions were changed to his disadvantage by the respondents No.1 to 4 in contravention of the provisions of Section 9-A of the Act. Rather, the petitioner (PW1) in his crossexamination admitted that when the muster roll of a driver (instead of supervisor) was issued in his name, he did not raise any objection.

26. From the admissions made by the parties, letter Ex. PW1/B and the documents available on the file, it can be gathered that the services of the petitioner were initially engaged in the month of February, 2007 and he continuously worked up-to the month of November, 2010. The petitioner was initially appointed as a supervisor. Thereafter, the muster rolls of driver were issued in his name. He worked as contingent paid supervisor/driver in different schemes/heads from the

date of his initial engagement till the date of disengagement in the office of the respondent No.4. The petitioner was never employed as a daily paid worker by the respondents No. 1 to 4.

27. The petitioner (PW1) in his cross-examination admitted that the post of driver was lying vacant since the month of November, 2003 in the office of the respondent No.4 and the recruitment process for filling up the post of the driver was started by the respondents in the year 2009. From the letter Ex. PW1/C (similar to Ex. RW1/I), it can be gathered that the process of filling up the posts of drivers on contract basis was stalled only in those development blocks where the daily waged drivers were serving. The daily waged drivers were allowed to continue working by the department to avoid the litigation. The daily waged drivers working in the nine development blocks only as detailed in the letter Ex. PW1/C were allowed to continue working. As already mentioned, the petitioner was not a daily waged driver. He was a contingent paid driver to whom the payment was made by the respondent No.4 under different heads/schemes.

28. There is no denial of the fact that the post of the driver is Class-III (Non-Gazetted). Recruitment and Promotion Rules for the post of the drivers were notified by the Rural Development Department per notification dated 19.10.2006, the copy of which is Ex. RW1/E. The Recruitment and Promotion Rules were amended vide notification dated 09.10.2007, the copy of which is Ex. RW1/D. As the post of the driver in the office of the respondent No.4 was lying vacant, the recruitment process was initiated by the Deputy Commissioner-cum-Chief Executive Officer, District Rural Development Agency, Chamba, as per the instructions issued by the Government. For selecting a driver to be employed on contract basis a committee was constituted by the Deputy Commissioner per office order dated 03.7.2009, the copy of which is Ex. RW1/F. Admittedly, four persons applied for the post of the driver including the petitioner and the respondent No.5. Only the petitioner and the respondent No.5 appeared before the selection committee. Shri Ashok Kumar (respondent No.5) was selected for appointment as a driver on contract basis by the selection committee since he scored more marks than the petitioner. Accordingly, Shri Ashok Kumar was appointed as a driver by the respondent No.4 per appointment letter dated 22.11.2010, the copy of which is Ex. PW1/G.

29. Since the petitioner participated in the selection process, he is debarred from canvassing that the selection was unfair or the selection committee was not properly constituted (judgment dated 24th April, 2012 passed by the Hon'ble High Court of Himachal Pradesh in CWP No. 6713/2010 titled as Shri Amar Nath Rana versus State of Himachal Pradesh through its Secretary Home and others relied). It is the admitted case of the petitioner that he did not approach the Court to get the selection process stalled on any count including the fact that the selection committee has not been properly constituted by the Deputy Commissioner, Chamba.

30. The petitioner (PW1) in his cross-examination admitted that after the disengagement of his services, no contingent paid supervisor or driver has been employed in the office of the respondent No.4. The petitioner has failed to disclose the name of any contingent paid worker junior to him who was retained in service by the respondents at the time of the alleged termination of his services. At the cost of reiteration, I will like to add that the petitioner was only a contingent paid worker/driver, who unsuccessfully participated in the selection process. The provisions of Sections 25-F, 25-G and 25-H of the Act are not attracted in this case.

31. The petitioner is unable to show me as to how and on what basis he is entitled to the wages as claimed. He has no cause of action. The claim petition is not maintainable. The petitioner is estopped from filing the claim petition by his act and conduct. The disengagement of the services of the petitioner by the respondents cannot be termed as illegal or unjustified.

32. To be fair to the ld. counsel for the petitioner, now I proceed to discuss the rulings cited by him.

i. State of H.P. and another Petitioners versus Hussan Chand Respondent, 2007 (3) Shim. LC 265. This case relates to a workman whose services were terminated after retaining the junior.

ii. Block Development Officer, Pragpur, Petitioner versus Yoginder Kumar and others, Respondents, 2008 (1) Shim. LC 513. This case deals with the daily wager whose services were terminated in contravention of the provisions of Section 25-F of the Act.

iii Nahan Ferro Alloys & Chemicals Pvt. Ltd., Petitioner versus Bhopal Singh and another, Respondents, Latest HLJ 2011 (HP) 638. This case too relates to a daily wager whose services were terminated in violation of the provisions of Section 25-F of the Act.

iv. State of Himachal Pradesh and another, Petitioners versus Kapil Dev, Respondent, 2011 (3) Shim. LC 472. In this case the services of a daily wager were terminated by flouting Sections 25-F and 25-G of the Act.

v. Gauri Dutt & ors. Petitioners, versus State of H.P., Respondent, Latest HLJ 2008 (HP) 366. This case deals with the regularization of the daily waged employees.

33. The trite laid down in none of the above authorities holds good in view of the facts and circumstances of the instant lis.

34. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

35. These issues are decided against the petitioner and in favour of his opponents.

ISSUE NO. 5

36. Not pressed.

ISSUE NO. 6

37. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the

observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

38. This issue is decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE NO. 8)

39. As a sequel to my findings on the various issues, the present claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

40. The reference is answered in the aforesaid terms.

41. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

42. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 495/2009

Date of Institution : 20.11.2009

Date of Decision : 28.10.2013

Shri Moti Ram s/o Shri Tek Chand, r/o Village Suella, P.O. Tarella, Tehsil Churah, Distt. Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Killar at Pangi, Distt. Chamba, H.P.

..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Sh. Moti Ram S/O Sh. Tek Chand by The Executive Engineer, HPPWD Division, Killar at Pangi, Distt. Chamba, H.P. w.e.f. Year, 2006 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as a beldar in the month of April, 2004. He worked continuously as such up-to the month of October, 2006 in HPPWD Sub Division, Shor. He served without any break. On 1st November, 2006, his services were terminated by the respondent by a verbal order without any notice and assigning any reason. At the time of the disengagement of his services, the persons junior to him (petitioner), who are the favorites of the respondent, were retained in service by the respondent/department. The juniors are still serving the respondent. He (petitioner) had completed more than 160 days of work (Pangi is tribal area) in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The respondent has failed to re-engage his services despite the availability of the work and the funds. A demand notice dated 06.8.2007 was served upon the respondent by him, but in vain. As such, he (petitioner) prays that the termination order passed by the respondent on 01.11.2006 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to regularize his services in the regular pay scale and the arrears of pay allowance be granted to him.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claimant/petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petition suffers from the vice of delay and laches. The same is not maintainable as no legal or fundamental right of the petitioner has been infringed.

On merits, it has been owned that the services of the petitioner were initially engaged as a daily waged beldar in the year 2004. He worked for 152 days in the year 2004 and 72 days in the year 2005. The petitioner was an intermittent worker. He did not complete the criteria of 160/240 days for the purpose of seniority/regularization. The petitioner was never sincere towards his duties. His services were never disengaged as alleged. Actually, in the year 2005, the petitioner left the job voluntarily to take up the profession of a whole time agriculturist. He never reported for duty thereafter. Since the petitioner willingly left the service, he is not entitled to any protection under the Act. No notice was required to be given to him. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief. The area where the petitioner was engaged falls under the non tribal area of Pangi HPPWD Division.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 18.3.2011, following issues were struck by my ld. Predecessor.

1. Whether the termination of the petitioner w.e.f. year, 2006 is violative of the provisions of Sections 25-F & 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? ..*OPP.*

2. Whether the reference is not maintainable as alleged. If so, to what effect? ..*OPR.*

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Moti Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he worked only in the years 2004 and 2005 as well as did not complete 160/180 days of work. He also denied that in the year 2005, he abandoned the job and was not a sincere worker. He refuted that no person junior to him is serving the respondent and he has given a phoney statement.

10. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division, Killar/Pangi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that as per the record when the petitioner left the service, no notice was given to him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He denied that intentional breaks in service were provided to the petitioner during the period of his employment.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. No reference has been received from the appropriate Govt. regarding providing the artificial/fictional breaks in service to the petitioner by the respondent/employer. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per Section 10(4) of the Act.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the year 2004. The version of the petitioner is that on 1st November, 2006, his services were terminated by the respondent by an oral order without assigning any reason wrongly

and illegally. While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He was not sincere towards his duties and abandoned the job of his own accord and free volition in the year 2005.

14. The mandays chart Ex. RW1/A produced by the respondent is not in dispute. Its perusal discloses that the petitioner was initially employed in the month of June, 2004 and he served the respondent/department up-to the month of October, 2005 intermittently. In October 2005, he worked for only 13 days. The petitioner served for 152 and 72 days in the years 2004 and 2005 respectively.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that after the petitioner allegedly left the service, no notice was served upon him calling upon him to resume his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duties. The plea of abandonment put forth by the respondent is not established.

16. Now comes the all important question as to whether the services of the petitioner were terminated by the respondent wrongly and illegally or not? As already mentioned, Pangi is tribal area. The respondent has not adduced any evidence to show that the petitioner was working in the non tribal area of HPPWD Division Pangi.

17. The mandays chart Ex. RW1/A unfolds that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of his alleged termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

18. The petitioner has not disclosed the name of any person junior to him who was retained in service by the respondent at the time of the termination in question. Not only this, the petitioner has failed to divulge the name of any person whose services have been engaged by the respondent after the alleged termination. For these reasons, it cannot be said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

19. Otherwise too, as mentioned earlier the mandays chart Ex. RW1/A is not in dispute. It reveals that the petitioner served the respondent/department only up-to the month of October, 2005. In October, 2005, he served for 13 days. As the petitioner worked up-to the month of October, 2005, the question of the termination of his services by the respondent on 01.11.2006 (as claimed) does not arise.

20. Such being the situation, I have no hesitation to conclude that no provision of the Act has been flouted by the respondent. The claim petition is not maintainable. The petitioner is not entitled to any relief. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to prefer a totally false and baseless claim.

21. These issues are decided against the petitioner and in favour of his adversary.

ISSUE NO. 3

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed

to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

24. Taking into consideration my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 16/2013

Date of Institution : 18.02.2013

Date of Decision : 28.10.2013

Ms. Bego Devi d/o Shri Bhan Chand, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD Division, Killar at Pangi, Distt. Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

: Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Ms. Bego Devi D/O Sh. Bhan Chand, Village Kawas, P.O. Killar, Tehsil Pangi, Distt. Chamba, H.P. by The Executive Engineer, HPPWD Division Pangi at Killar, Distt. Chamba w.e.f. October, 2003 and retaining the junior workmen as alleged by worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were initially engaged as a daily waged beldar on muster roll basis by the respondent in the month of April, 1995. She worked as such up-to the month of October, 2003. During the period of her employment, the respondent used to engage and disengage her services as well as provide the intentional breaks so as to deprive her from completing 160 days of work (Pangi is tribal area). In the month of October, 2003, her services were finally terminated by the respondent by a verbal order without assigning any reason. At the time of the disengagement of her services, neither any notice was given to her nor the wages in lieu of the notice period and the retrenchment compensation were paid. No prior approval of the Government was obtained by the respondent before the termination of her services. The overall divisional level seniority list of daily waged workmen was neither circulated nor got noted down from the concerned workmen by the respondent before effecting the retrenchment of her services. At the time of her disengagement, the persons junior to her namely Shri Hukam Chand etc. were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after the termination of her services, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Sham Lal and Dev Raj etc. She (petitioner) never remained absent from duties willingly from the date of her engagement till the date of the termination. She did not work during the period the work/muster roll was not provided to her by the respondent. She is not a defaulter. The break period is required to be counted for the purpose of continuous service as per Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). If her services would not have been terminated illegally and the intermittent breaks in service were not given to her by the respondent, she must have completed 10 years of continuous service on 31.12.2004. She would have become entitled for the regularization of her services w.e.f. 01.1.2005 as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upahdayay's case. She has spot less service record. An opportunity of personal hearing was not afforded to her before the retrenchment. Against the illegal termination order, she preferred an Original Application No. 45/2004 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. Per order dated 09.1.2004, the Hon'ble Administrative Tribunal directed the respondent to re-engage her services if some junior persons have been engaged. Pursuant to the order dated 09.1.2004 passed by the Hon'ble Administrative Tribunal, she made various requests to the respondent to reemploy her, but in vain. From the date of her final termination, she is unemployed. Even during the break period, she was not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also

violative of the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent indulged in unfair labour practice.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"a) The oral orders of termination/retrenchment of my services passed by the respondent from the month of October, 2003 be set-aside being illegal arbitrary and un-justified.

b) To direct the respondent to re-instate the services of petitioner w.e.f. October, 2003 along with full back wages, seniority including continuity of services as the petitioner remained un employed since the date of illegal retrenchment/termination of services.

c) To direct the respondent to count the period of intermittent/fictional breaks given time and again during the entire service between April, 1995 to October, 2003 be counted towards the calculation of continuous service of 160 days in each calendar year (as laid down for the tribal area of Pangi Tehsil) under Section 25-B of ID Act 1947 and regularize the service of the petitioner w.e.f. 01.01.2005 under 10 years regularisation policy/8 years regularisation policy already notified by the HP Govt. along with all consequential benefits.

d) To direct the respondent for the production of original record pertaining to the case of petitioner.

e) To direct the respondent to re-engage petitioner on muster roll basis pending final decision of the case.

f) Any other relief as the Hon'ble Court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a daily waged beldar. However, it has been pleaded that she was initially appointed in the month of June, 1995 and not in the month of April, 1995 as claimed. Neither the services of the petitioner were disengaged nor the fictional breaks were provided to her at any point of time as alleged. The petitioner used to work intermittently. She did not complete continuous service of 160 days in each and every calendar year for the purpose of seniority/regularization of her services as per the instructions issued by the Government. The services of the petitioner were not terminated in the month of October, 2003. She left the job voluntarily. The petitioner was never sincere towards her work. She habitually absented from her duties. She never approached him (respondent) for the re-engagement of her services by moving a written application. It stands admitted that the petitioner had preferred an Original Application before the Hon'ble Administrative Tribunal. Such Original Application was disposed of by the Hon'ble Administrative Tribunal. He (respondent) never flouted the principle of 'last come first go'. When the funds and the work were available, the petitioner was asked to join her duties, but she never reported for duty. The petitioner cannot claim parity with the workmen who worked in continuity. In the tribal area of Pangi valley the working season is from the month of May to October. Now the State Government has imposed a complete ban on the engagement of the daily paid workers. Some of the workmen, whose names have been disclosed by the petitioner, were engaged on compassionate grounds. As the petitioner willingly left the job she is not entitled to any protection under the Act. The petitioner has no cause of action. The claim petition is not maintainable. The petitioner is gainfully employed. She is also working as an agriculturist. No provision of the Act has been infringed. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that she never abandoned the job.

5. Per order dated 05.7.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent in the month of October, 2003 is illegal and unjustified as alleged? ..*OPP.*

2. Whether the claim petition is not maintainable in the present form? ..*OPR.*

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed
Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Kumari Bego Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she joined the service in the month of June, 1995. She also admitted that Pangi valley remains snow clad for almost six months every year. She denied that she used to work as per her convenience and in the month of October, 2003 after working for 15 days, she willingly left the job. Further, she denied that to gain the employment and other undue benefits, she has instituted a phoney petition.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division, Killar/Pangi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the petitioner allegedly left the service, no notice was served upon her asking her to resume the work. Even no departmental proceedings were initiated against the petitioner. He denied that he has given a wrong statement.

10. Ex. PW1/B is the copy of the interim order dated January 09, 2004 pronounced by the Hon'ble Administrative Tribunal in O.A. No. 45 of 2004 titled as Smt. Bego Devi versus State

of H. P. through Secretary, HPPWD and another. Its perusal discloses that the respondents were directed to re-engage the applicant (Bego) if some junior persons have been engaged.

11. Exts. PW1/C to F are the mandays charts relating to Shri Chunku Ram and others working under the respondent.

12. Ex. PW1/G is the detail of the daily waged workers, who were regularized on completion of eight or more years of service as on 31.3.2008 with a minimum of 240 days in non tribal area and 180/160 days in tribal area in each calendar year pertaining to the office of the respondent.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. Ex. RW1/B is the copy of a letter dated 28.8.2006 written by the Chief Engineer (North) HPPWD, Dharamshala to the Superintending Engineer 7th Circle, HPPWD, Dalhousie. In this letter, it has been mentioned that the Original Application No.45/2004 instituted by the petitioner (Bego Devi) has been disposed of on 31.7.2006.

15. Ex. RW1/C is the copy of a letter written by the Additional Advocate General, State of Himachal Pradesh, Shimla to the Engineer-in-Chief, HPPWD, Himachal Pradesh, Shimla-1. In this letter, it has been highlighted that O.A. No.45/2004 titled as Bego Devi versus State has been disposed of by the Hon'ble Himachal Pradesh Administrative Tribunal at Shimla on 31.7.2006.

16. No reference has been received from the appropriate Govt. regarding providing the artificial/intentional breaks in service to the petitioner by the respondent from time to time. Thus, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per Section 10(4) of the Act.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent. The petitioner (PW1) in her cross-examination admitted that her services were initially engaged by the respondent in the month of June, 1995. The mandays chart Ex. RW1/A produced by the respondent is not in dispute. Its perusal discloses that the petitioner served the respondent/department intermittently from June, 1995 to October, 2003. In the month of October 2003, she worked for only 15 days.

18. The version of the petitioner is that in the month of October, 2003, her services were wrongly and illegally terminated by the respondent by an oral order. While denying the said fact, the respondent has pleaded that the petitioner was not a sincere worker. She used to work as per her convenience as well as left the job of her own accord and free volition in the month of October, 2003.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he/she has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon her to resume her duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

20. The mandays chart Ex. RW1/A depicts that the petitioner did not complete 180/160 days of work in a block of 12 calendar months preceding the date/month of her termination i.e. October, 2003 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. From the mandays charts Exts. PW1/C to G, it can be gathered that at the time of the disengagement of the services of the petitioner in the month of October 2003, the persons junior to her namely Shri Chunku Ram etc. were retained in service by the respondent. This indicates that the respondent failed to adhere to the principle of 'last come first go'. Not only this, one Shri Chain Singh s/o Shri Heer Chand, who was junior to the petitioner was re-employed by the respondent in the year 2011. There is nothing on the record to show that at the time of re-appointing Shri Chain Singh, an opportunity of re-employment was afforded to the petitioner by the respondent. This clearly shows that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. For these reasons, the disengagement of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240/180/160 days of work in a block of 12 calendar months anterior to the date/month of her termination.

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

23. Not pressed.

ISSUE NO. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given her age as 30 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

27. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by

the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date/month of her illegal termination i.e. October, 2003, except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of October, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

ब अदालत श्री कुलदीप सिंह पटियाल, तहसीलदार एवं उप–पंजीकाध्यक्ष, घुमारवीं, जिला बिलासपुर, हिमाचल प्रदेश

श्री सुशील कुमार पुत्र स्व0 श्री रतन लाल आदि निवासी गांव बकरोआ, डा0 भगेड़, परगना तियून, तहसील घुमारवीं, जिला बिलासपुर, हिमाचल प्रदेश।

बनाम

आम जनता

इन्तकाल दर्ज करने बारे।

हर आम व खास को सूचित किया जाता है कि श्री सुशील कुमार पुत्र स्व0 श्री रतन लाल आदि निवासी गांव बकरोआ, डा0 भगेड़, परगना तियून, तहसील घुमारवीं, जिला बिलासपुर, हिमाचल प्रदेश ने इस न्यायालय में दरख्वास्त इन्तकाल दर्ज करने बारे प्रस्तुत की है। इन्तकाल जायज वारसान सुशील कुमार, राकेश कुमार पुत्रान, श्रीमती निर्मला देवी पत्नी स्व0 श्री रतन लाल, कलां देवी पत्नी स्व0 श्री सत्या पाल, ममता कुमारी, रचना कुमारी, पुत्रियां श्री सत्या पाल, रजनीश कुमार पुत्र स्व0 श्री सत्या पाल, निवासी गांव बकरोआ के नाम होना है। अगर इस इन्तकाल को दर्ज करने बारे किसी को एतराज है, तो वह अपनी आपत्ति इस न्यायालय में दिनांक 1–3–2014 से पूर्व असालतन या वकालतन प्रस्तुत कर सकता है। बाद गुजरने मियाद एतराज काबिले समायत नहीं होगा तथा अग्रिम आदेश इन्तकाल दर्ज करने बारे जारी कर दिए जाएंगे।

आज दिनांक 4–1–2014 को मेरे हस्ताक्षर एवं मोहर अदालत द्वारा जारी हुआ।

मोहर।

कुलदीप सिंह पटियाल,
तहसीलदार एवं उप–पंजीकाध्यक्ष,
घुमारवीं, जिला बिलासपुर (हि0 प्र0)।

ब अदालत श्री बलवीर ठाकुर स्पैशल मैरिज अधिकारी एवं उप–मण्डल दण्डाधिकारी, नादौन, जिला हमीरपुर, हिमाचल प्रदेश

तारीख दायरा : 23–12–2013

उनवान :

1. श्री अश्वनी कुमार सुपुत्र श्री ध्यान सिंह, गांव भवड़ां, डाकखाना किटपल, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश।

2. श्रीमती भावना सुपुत्री श्री डेविड, वासी हाउस नं0 139, गनी नं0 2, पंजवीर रोड़, कारपोरेशन कालोनी, हेवोवाल खुर्द, लुधियाना (पंजाब) .. प्रार्थीगण।

बनाम

आम जनता

प्रार्थना–पत्र जेर धारा 16 स्पैशल मैरिज ऐक्ट, 1954 के अन्तर्गत विवाह पंजीकरण करने बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 23–12–2013 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 5–12–2013 को हिन्दू रीति–रिवाज के अनुसार ज्वालामुखी मन्दिर, जिला कांगड़ा में शादी कर ली है और तब से पति पत्नी के रूप में रहते चले आ रहे हैं। इसलिए जेर धारा 16 स्पैशल मैरिज ऐक्ट, 1954 के अनुसार उनका विवाह पंजीकृत किया जावे।

अतः सर्वसाधारण एवं आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी भी व्यक्ति को इनकी शादी को पंजीकृत करने बारे कोई उजर व एतराज हो तो वह दिनांक 28–2–2014 को समय 10.00 बजे सुबह या इससे पूर्व असालतन या वकालतन हाजिर न्यायालय होकर पेश करे अन्यथा इनकी शादी को पंजीकृत कर दिया जाएगा।

आज दिनांक 23–12–2013 को हमारे हस्ताक्षर व मोहर न्यायालय से जारी किया गया।

मोहर। बलवीर ठाकुर,
स्पैशल मैरिज अधिकारी एवं उप–मण्डल दण्डाधिकारी,
नादौन, जिला हमीरपुर, हिमाचल प्रदेश।

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ब अदालत श्री बलवीर ठाकुर स्पैशल मैरिज अधिकारी एवं उप–मण्डल दण्डाधिकारी, नादौन, जिला हमीरपुर, हिमाचल प्रदेश

तारीख दायरा : 15–1–2014

उनवान :

1. श्री मनोज कुमार सुपुत्र श्री बलदेव सिंह, गांव खड़ोल, डाकखाना अरलू, तहसील बंगाणा, जिला ऊना, हिमाचल प्रदेश।

2. श्रीमती राधा कुमारी सुपुत्री श्री रोशन लाल, वासी समलाड़ा, डाकखाना जसाणा, तहसील बंगाणा, जिला ऊना, हिमाचल प्रदेश .. प्रार्थीगण।

बनाम

आम जनता

प्रार्थना–पत्र जेर धारा 15 स्पैशल मैरिज ऐक्ट, 1954 के अन्तर्गत विवाह पंजीकरण करने बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 15–1–2014 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 9–1–2014 को हिन्दू रीति–रिवाज के अनुसार शादी कर ली है और तब से पति–पत्नी के रूप में रहते चले आ रहे हैं। इसलिए जेर धारा 15 स्पैशल मैरिज ऐक्ट, 1954 के अनुसार उनका विवाह पंजीकृत किया जावे।

अतः सर्वसाधारण एवं आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी भी व्यक्ति को इनकी शादी को पंजीकृत करने बारे कोई उजर व एतराज हो तो वह दिनांक 25–2–2014 को समय 10.00 बजे सुबह या इससे पूर्व असालतन या वकालतन हाजिर न्यायालय होकर पेश करे अन्यथा इनकी शादी को पंजीकृत कर दिया जाएगा।

आज दिनांक 15–1–2014 को हमारे हस्ताक्षर व मोहर न्यायालय से जारी किया गया।

मोहर। बलवीर ठाकुर,
स्पैशल मैरिज अधिकारी एवं उप–मण्डल दण्डाधिकारी,
नादौन, जिला हमीरपुर, हिमाचल प्रदेश।

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ब अदालत श्री श्रवण मान्टा (एच0ए0एस0), उप–मण्डल दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री नवदीप अत्री पुत्र श्री रविदत्त अत्री, निवासी ग्राम Opp. गुज्जर कॉलोनी, बदरीपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

1. आम जनता, 2. सचिव, ग्राम पंचायत, 3. कार्यकारी दण्डाधिकारी, नगरपालिका।

विषय.––प्रार्थना–पत्र जेर धारा 8 (4) के अन्तर्गत विवाह के पंजीकरण बारे।

श्री नवदीप अत्री पुत्र श्री रविदत्त अत्री, निवासी ग्राम Opp. गुज्जर कॉलोनी, बदरीपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने प्रार्थना–पत्र मय हल्फिया ब्यान इस आशय से गुजारा है कि उसकी शादी श्रीमती नम्रता पुत्री श्री सागर सिंह, निवासी मिशन रोड, पठानकोट, तहसील व जिला पठानकोट (पंजाब) के साथ दिनांक 28–1–2011 को हुई है जिसे प्रार्थी गलती से ग्राम पंचायत में दर्ज नहीं करवा सका जिसे अब दर्ज करवाना चाहता है।

अतः इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की शादी के पंजीकरण बारे यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 15–2–2014 से पूर्व असालतन या वकालतन इस अदालत में हाजिर आकर अपने उजर / एतराज पेश कर सकता / सकती है। हाजिर न आने की सूरत में नियमानुसार शादी पंजीकरण के आदेश पारित कर दिए जाएंगे।

आज दिनांक 14–1–2014 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

श्रवण मान्टा,
उप–मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

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ब अदालत श्री श्रवण मान्टा (एच0ए0एस0), उप–मण्डल दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री अशीष मलिक पुत्र श्री अशाक मलिक, निवासी निवासी वार्ड नं0 82 / 2, डा0 जग्गावाली गली, बदरीपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

1. आम जनता, 2. सचिव, ग्राम पंचायत, 3. कार्यकारी दण्डाधिकारी, नगरपालिका।

विषय.––प्रार्थना–पत्र जेर धारा 8 (4) के अन्तर्गत विवाह के पंजीकरण बारे।

श्री अशीष मलिक पुत्र श्री अशाक मलिक, निवासी वार्ड नं0 82 / 2, डा0 जग्गावाली गली, बदरीपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने प्रार्थना–पत्र मय हल्फिया ब्यान इस आशय से गुजारा है कि उसकी शादी श्रीमती पूनम मलिक पुत्री श्री विरेन्द्र कुमार हरजाई, निवासी मकान नं0 404 / आर मोडल टाऊन यमुनानगर, हरियाणा के साथ दिनांक 17–1–2013 को हुई है जिसे प्रार्थी दर्ज करवाना चाहता है।

अतः इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की शादी के पंजीकरण बारे यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 4–2–2014 से पूर्व असालतन या वकालतन इस अदालत में हाजिर आकर अपने उजर / एतराज पेश कर सकता / सकती है। हाजिर न आने की सूरत में नियमानुसार शादी पंजीकरण के आदेश पारित कर दिए जाएंगे।

आज दिनांक 3–1–2014 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

श्रवण मान्टा,
उप–मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है